United States Court of Appeals for the Second Circuit



APPENDIX

75-7350 /J-/350



IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT No. 75-7358 DEC 1 1975

A DAMEL FUSAMU, CLERA

SECOND CIRCUIT

WILLIAM F. BUCKLEY, JR.,

Plaintiff-Appellee,

-v.-

FRANKLIN H. LITTELL,

JOINT APPENDIX

Volume I

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

- Filed Complaint, issued summons 7/1/70 Filed answer of the Macmillan Co. to complaint 1/28/71 6/9/71 Filed stip. and order that Franklin H. Littell is hereby substituted in place and stead of Gregory J. Perrin, for deft. So ordered, Lasker, J. 4/22/74 Before Griesa, J. -- Non-jury trial begun 4/23/74 Trial continued 4/24/74 Trial continued 4/26/74 Trial continued -- trial continued to following month, May 3, 1974 5/3/74 Trial continued, June 10, 11, 12, 13 6/14/74 Trial settled during trial as to the Macmillan Co. only 6/14/74 Filed stip. and consent order that action is discontinued with prejudice against the Macmillan Co. . . . Griesa, J. 12/10/74 Non-jury trial begun 12/10/74 and con't. 12/13/74. 12/13/74 Trial concluded. Total trial days 12 5/23/75 Filed Opinion #42474 5/27/75 Filed Judgment and Order #75,465, that pltff. have judgment against def't. (Littel!) in the am't. of
- 6/11/75 Filed def't. (Littell) notice of appeal to the USCA from Judgment #75,465 of 5/27/75.

The Macmillan Co.

\$1.00, for compensatory damages and in the am't. cf \$7,500 for punitive damages. It is further

ordered that the action is discontinued as to def't.

WILLIAM F. BUCKLEY, JR.,

Plaintiff.

-against-

COMPLATIT

THE MACMILIAN COMPANY and FRANKLIN :

70 Civ. 2844

H. LITTELL,

Defendants.

plaintiff, complaining of defendants, respectfully shows the Court and alleges:

- 1. Plaintiff is a citizen of the State of Connecticut; defendant MacMillan Company is a citizen of the State of New York; defendant Littell is a citizen of the State of Pennsylvania. The amount in controversy is more than \$10,000 (exclusive of interest and costs). This Court has jurisdiction pursuant to Title 23, United States Code, \$1332.
- periodical whose circulation is approximately 150,000 and which is generally considered the nation's leading journal of conservative opinion. He has published a number of widely read books. He writes a syndicated column that appears in approximately 300 newspapers. He conducts and appears in the nationally broadcast weekly television program "Firing Line". He is in frequent demand as a public speaker, particularly at colleges and universities. He is a member of the five-man Advisory Commission to the United States Information Agency. A recent example of the high regard

which plaintiff is held among people of widely varying political views is found in The American Heritage Series, a group of volumes published by the Bobbs Merrill Company, Inc., described by its general editors as aimed "...to provide the ess and primary sources of the American experience, especially of American thought and as a series which has "...thus far kept its thumb on the liberal side of the scales..." In a forthcoming volume, edited by plaintiff, the general editors of the series, Leonard W. Levy and Alfred Young, refer to plaintiff as follows:

"...He flatly rejects the intolerant and rigid dogmatism of Ayn Rand, the extreme and unrealistic anti-statism of conservatives who verge on anarchism, and the apopleptic and reckless reactionarism of the John Birchers with their conspiracy theories. Hr. Buckley's conservatism shares nothing in common with the conservatism of Big Business or of the celf-appointed super-patriots, bigots, and xenophobes...."

"...Mr. Buckley's conservatism is vigorously individualistic, in favor of ordered liberty, hostile to promiscuous equalitarianism, and pronouncedly tolerant..."

3. Defendants have published a book written by defendant Littell entitled "Wild Tongues". On pages 50 and 51 of the book "Wild Tongues" appear the following passages respecting plaintiff

"The Fellow Traveler"

"Whisking about the edges of any totalitarian movement is the 'fellow traveler,' pirouetting into the whirlpool and out again as the vortex draws more powerfully and then recedes. His role is as dangerous to social health and as important to building up totalitarian parties as the equally ambiguous figure of the pseudo-conservative. The fellow traveler to the Communists or fascists is a fascinating psychological study: fascination with brute force and its misuse plays an important role. Students of communism have commented at length upon the party member's 'psychology of the pawn'—his need to be misused and abused, to the destruction of his own personhood. The fellow traveler's responses are essentially feminine, registering the ambivalence of love and hate toward the master and mover.

"The fellow traveler refuses to accept discipline and is therefore both used and despised by the party leaders. At the same time, he is dangerous to political movements and republican institutions of integrity, because he functions as a deceiver. He appears at times to be independent, but, when a major issue is at stake, he follows the party line.

"Perhaps the most famous type in recent years was Von Ribbentrop, pseudo-intellectual and champagne salesman, who was of great use to the Nazi government in giving an aura of respectability to international policies which, without a debonair front, might have been recognized readily for what they were: simple thuggery.

"In America, the outstanding representative of this function is William 7. Buckley, Jr., editor of The National Review and perennial political candidate. Buckley got his start as a smart young 'intellectual' by writing a book, God and Man at Yale, upon graduating from his alma mater. The book has been soundly exposed and condemned by professors and overseers and loyal alumni for falsely twisting facts and for sheer malice. The National Review and his syndicated newspaper column, 'On the Right,' frequently print 'news items' and interpretations picked up from the openly fascist journals and have been important and useful agencies for radical right attacks on honest liberals and conservatives.'

"Buckley has bee raught out for misquotations (with quotation marks!) and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims. Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit, Buckley could be taken to court by any one of several people who had enough money to hire competent legal counsel and nothing else to do. Reynolds won his suit, of course, but it took all of his time and resources for most of three years, and he died shortly thereafter."

By said laine Said words were false and mulicious. and malicious words defendants intend to charge that plaintiff was a Nazi fellow traveler, that he admired Hitler, that he believed in the extermination of the Jewish people, that he favored the suppression of free speech, that he favored the exercise of brutality by police officers and other philosophies advocated by and associated with the Nazi party in Germany, that his own writings are false and malicious and have been exposed as such, and in particular, that his book "God and Man at Yale" has been exposed and condemmed by refessors, overseers and loyal alumni of that University for said falsity and malice, that said alleged falsity and malice extends to the fabrication of alleged quotations in publications other than "God and Man at Yale" and that said falsit and malice have been employed by plaintiff as regards at least several people and that said false and malicious assertions by plaintiff constantly undermine respect for the leadership and institutions of the United States and that plaintiff is a homosexual.

- 5. Defendants published said words knowing them to be false and/or with reckless disregard of whether they were false or not.
- 6. By reason of said false and malicious publication plaintiff has been greatly injured in his good name and reputation and held up to public scorn, hatred, disgrace, scandal, contempt and dishonor and has been caused great mental anxiety and suffering.

WHEREFORE, plaintiff demands of the defendants \$100,000 damages, compensatory and punitive, together with the costs of this action.

Dated: New York, New York
June 30, 1970

BAKER, NELSON, WILLIAMS & MITCHELL Attorneys for Plaintiff

By: </ | Pillip | 1/16.

A Hember of the am 20 Exchange Place New York, New York 10005 WH 4-5800 WILLIAM F. BUCKLEY, JR.,

70 Civ. 2844

Plaintiff,

- against -

ANSWER

THE MACMILLAN COMPANY and FRANKLIN H. LITTELL,

Defendants.

Defendant, THE MACMILLAN COMPANY ("MACMILLAN"), by its attorneys, respectfully answers complaint as follows:

AS AND FOR A FIRST DEFENCE

- 1. With respect to the allegations of paragraph "1" of the complaint, defendant MACMILLAN avers that it is without knowledge or information sufficient to form a belief as to the truth of such allegations except admits that it MACMILLAN is a citizen of the State of New York; and, on information and belief, avers that plaintiff is a citizen of the State of New York and that this Court has jurisdiction over the subject matter of this litigation.
- 2. With respect to the allegations of paragraph "2" of the complaint, defendant MACMILIAN avers it is without knowledge or information sufficient to form a belief as to the truth of such allegations, except admits that plaintiff WILLIAM F. BUCKLEY, JR., is a well known writer, journalist, television personality, political commentator, lecturer and political figure.

- 3. With respect to the allegations of paragraph "3" of the complaint, defendant MACMILLAN admits that the material quoted therein, in context with related material not quoted in the complaint, appears in the book entitled "WILD TONGUES" published by defendant MACMILLAN and authored by defendant, Dr. Franklin H. Littell.
- 4. Defendant MACMILLAN denies the allegations set forth in paragraphs "4", "5" and "6" of the complaint insofar as such allegations refer or relate to MACMILLAN.

AS AND FOR A SECOND DEFENSE

5. Plaintiff WILLIAM F. BUCKLEY, JR., is a public figure within the meaning of the United States Supreme Court decision in Sullivan v. New York Times, being a well known political commentator, writer, television personality, political figure, and former candidate for public office, and the matters referring to him in the book "WILD TONGUES" are therefore privileged.

AS AND FOR A THIRD DEFENSE

6: References to plaintiff WILLIAM F. BUCKLEY, JR., in the book "WILD TONGUES" are true and were published without malice.

AS AND FOR A FOURTH DEFENSE

7. The references to plaintiff WILLIAM F. BUCKLEY, JR., contained in the book "WILD TONGUES" constituted fair comment with respect to Mr. Buckley, a well known and controversial public and political figure, writer and commentator.

AS AND FOR A FIFTH DEFENSE

The references to plaintiff WILLIAM F. BUCKLEY, JR., published in the book "WILD TONGUES" constituted a reply to a previous attack published by plaintiff, WILLIAM F. BUCKLEY, JR.; upon the author if said book, Dr. Franklin H. Littell.

WHEREFORE, defendant MACMILLAN requests that plaintiff's complaint be dismissed, together with the costs of this action.

Dated: New York, New York January 26, 1970.

LINDEN AND DEUTSCH

By: A Member of the Firm

Attorneys for Defendant THE MACMILLAN COMPANY Office & P. O. Address: 110 East 59th Street New York, N.Y. 10022

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2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	WILLIAM F. BUCKLEY, JR., :
6	Plaintiff, :
7	-against- : 70 Civ 2844
8	THE MacMILLAN COMPANY and : FRANKLIN H. LITTELL,
10	Defendants.
11	x
12.	Before:
13	HON. THOMAS P. GRIESA,
14	District Judge
15	New York, New York
16	April 22, 1974 - 10 a.m.
17	APPEARANCES:
18	WORMSER, KIELY, ALESSANDRONI & McCANN, ESQS. Attorneys for Plaintiff
19	By: J. DANIEL MAHONEY, ESQ. DAVID CALLAHAN, ESQ. and
20	C. DICKERMAN WILLIAMS, ESQ.
21	LINDEN & DEUTSCH, ESQS. Attorneys for Defendant The MacMillan Company
22	By: DAVID BLASBAND, ESQ.
23	FRANKLIN II. LITTELL, ESQ., Pro Se
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(In open court.)

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MR. MAHONEY: Plaintiff is ready.

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MR. BLASBAND: Defendant MacMillan ready.

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DR. LITTELL: Ready.

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THE COURT: I have had the benefit of the briefs.

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so I doubt if any opening statements are necessary. I think

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the only thing that has to be done before we start the

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evidence is to take care of two motions made by Dr. Littell

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to dismiss the Complaint.

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Dr. Littell is appearing pro se. I received a

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document dated March 30, 1974 entitled "Memorandum." This

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came from Dr. Littell. It constitutes a statement of his

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position in the case and it includes at the end a motion to

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dismiss the case on two grounds, one that the claim of the

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plaintiff is barred by the doctrine of New York Times v.

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Sullivan, and second that the claim of the plaintiff is

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barred because, as alleged by Dr. Littell, the plaintiff does not come to court with clean hands, having previously

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attacked defendant Littell in writings of the plaintiff.

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The motion of Dr. Littell to dismiss the case is

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denied. I think we can proceed with the evidence.

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MR. MAHONEY: Your Honor, I would like to state also that after the stipulation, the agreed stipulation of

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facts that had been submitted to the Court, there has since

vou.

been an exchange of correspondence in which, as I understand it, both defendants have conceded that Mr. Buckley is a citizen of the State of Connecticut.

Is there any disagreement with that?

MR. BLASBAND: There is no disagreement. But it was stipulated between Mr. Callahan and myself that such stipulation would apply to this case only.

MR. MAHONEY: Fine.

And is that agreeable to you, Doctor?

DR. LITTELL: It sounds reasonable enough. Thank

THE COURT: Okay.

MR. MANONEY: So we won't have to bring in any proof on that.

Also, in the documents, one other minor point here.

The documents, of which Mr. Callahan submitted a handwritten summary to you, we have not been given, unless we just got it now.

Dr. Littell submitted a series of documents to us pursuant to your direction. Then Friday he came up with an itemization, he and Mr. Blasband, of those documents upon which they would rely at the trial. Two of the documents in question, Defendants' Exhibit E and Defendants' Exhibit F, we have not previously seen.

THE COURT: You can work that out with Dr. Littell.

MR. MAHONEY: I haven't seen it until this moment.

I think we can probably work it out.

THE COURT: These are matters that I think can be discussed at a recess. I don't think we have to take time right now. That is something that will come later.

DR. LITTELL: There were no new documents on Friday
MR. MAHONEY: We call Mr. William F. Buckley, Jr.

WILLIAM F. BUCKLEY, JR., the plaintiff, called as a witness in his own behalf.

being first duly sworn, testified as follows:

MR. MAHONEY: Your Honor, I would like to commence the examination by reference to a document that, although used at the depositions, was not marked in evidence. It is just simply a biography of Mr. Buckley. I would like to put that in evidence.

MR. BLASBAND: May I ask you, Mr. Mahoney --

THE COURT: The way I would like to handle document is: any document you refer to, have the clerk mark it for identification. This was supposed to have been done before we came together this morning.

MR. MAHONEY: That's right, your Honor. This is the only document that I know of.

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK NY = 791-1020

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THE COURT: All right. Let's get the clerk to mark it for identification. Then we have something to refer to.

(Plaintiff's Exhibit 41 marked for

identification.)

MR. BLASBAND: May I ask Mr. Mahoney the basis upon which he proffers that document?

MR. MAHONEY: I can have Mr. Buckley testify to all this. Some of it has been stipulated. I just thought it would save some time. If you want to know the relevance, it is relevant to the question of reputation, which is relevant to the question of damages.

THE COURT: Any objection?

MR. BLASBAND: I have no objection to most of it.

Certainly parts of it I do object to.

THE COURT: Okay.

MR. BLASBAND: I do object to the section on the awards and honorary degrees and supplemental references.

THE COURT: On the grounds that the material is inaccurate or irrelevant or what?

MR. BLASBAND: That they are not relevant.

THE COURT: The objection is overruled. Exhibit 41 is received.

(Plaintif.'s Exhibit 41 for identification received in evidence.)

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SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

DIRECT EXAMINATION

BY MR. MAHONEY:

Q Mr. Buckley, certain information concerning your career has been stipulated, but I wonder if you could descr for us in general terms what your career has been and what your career function, so to speak, has been since your graduation from Yale in 1949. Go ahead.

A My memory is not as sharp on what it was. How shall a describe my career?

Q There has been a stipulation of the basic facts, just the basic data of your career, that you have been edited of National Review, that you have a television show, that you have a newspaper column. So we don't need to go through the And that's also included in there, in that document that has been received in evidence.

So what I'm talking about is just the general underlying purpose of your career, the general underlying purpose the activities you've been engaged in.

A Well, I think it can be said loosely that in the last 20 years or so I have endeavored to make a case, or to provide vehicles for a case being made, for a point of view which has been a dissenting point of view, on a number of social, philosophical and political issues. This has been done through National Review by a number of writers, scholar

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and journalists and by myself personally in various mediums.

Is that what you are getting at?

Q Yes. And would that same basic theme or purpose underlie what you've done in terms of political candidacy on one occasion, your television program and your columns and books?

A That's correct.

Now, would you describe for the Court the basic viewpoint that you've been promoting through these activities.

A It is generally referred to as a conservative viewpoint. It tends to prefer the private over the public sector.

It tends to view the communist threat from abroad as the
principal threat to world peace. And it tends to reject
philosophical positivism in favor of a metaphysical defense
of human freedom and human equality.

Now, in the spectrum of conservative thought in the United States of America today and throughout this period, could you describe that briefly for the Court?

A Well, I can describe it to the Court as it is generally laid out in any of these schematics. They tend to start with a "right" part of the spectrum over here and a "left" part of the spectrum here (indicating).

My own feeling is actually that the right and the left join, that the schematic is more accurately pictured as

a circle. But popularly we have the notion that at one end

you have right totalitarianism, of which Hitler was clearly

would have the left totalitarian, the Stalin, and as you wor

from one to the other you traverse, beginning from Stalin,

socialism on over to a sort of pragmatic liberalism and from

pragmatic liberalism to a sort of a pragmatic conservatism,

from a pragmatic conservatism to a principal conservatism,

from a principal conservatism on over to a sort of a neo-

despotism of the right, from there on over towards fascism,

let us say, on over to democratic socialism, democratic

the most obvious historical example, at the other end you

THE COURT: From fascism on over to what?

THE WITNESS: Naziism.

and from fascism on over towards naziism.

THE COURT: I see.

Are you familiar with a book "Wild Tongues" that Dr. Littell has written?

I'm familiar with the libeled sections of it.

And are you familiar with the general theme of the 0 book?

Yes, sir, I am.

Now, this book discusses, among other things, extremism on the right, does it not?

It does.

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Now, have you been engaged in controversy, among other things, over these past 20 years the question of extremism on the right?

A Oh, yes, of course.

Q Could you tell us a little bit about that?

A Well, I have maintained, I think very consistently, that responsible conservatives must not be associated organizationally or philosophically with the fascist right. On this, so far as I know, I have not deviated. And on several occasions I have made that distinction so sharply as to come under considerable fire from the irresponsible right.

Q You've used two terms here, the fascist right and the irresponsible right. Are they, in your judgment, synonymous?

A No. they are not synonymous.

Nould you describe the difference, please.

A Well, the fascist right would constitute a group that would willingly use the power of the state in order to bring about their desired ends. The irresponsible right is simply loose-lipped.

THE COURT: Wait a minute. I'm not clear. You are saying irresponsible right or responsible right?

THE WITNESS: Irresponsible.

THE COURT: All right. Tell me again. Go back to

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the fascist right. This is a group who would do what?

THE WITNESS: That would take the power of the state for the purpose of achieving its objectives. In that sense I think it could properly be called fascistic.

The irresponsible right, while stopping short of any cause for the use of the state or its instrument to achieve its objectives, would nevertheless fail to make important distinctions for the sake of advancing itself polemically.

Q Could you give us any examples of people whom you regard as part of the irresponsible right in America today?

A Well, I should think a very clear example of the irresponsible right would be the John Birch Society and its leaders.

- O And who is the principal leader there?
- A Robert olch.
- Q Have you had occasion over the years to become engaged in Controversy with respect to Mr. Robert Welch?
 - A Yes, sure. He was by no means the first.
 - Q Well, who were some of the others?

A Well, in the late part of the decade of the 1950's when the American Mercury took a tern towards anti-Semitism, I issued a communication saying that nobody who appeared on the masthead of Mercury could appear on the masthead of

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National Review.

Q Is that a current policy?

A Well, at this point it is unnecessary because the Mercury, having established itself as sort of a fever swamp to the right --

MR. BLASBAND: I didn't hear that.

THE WITNESS: I said that hercury having established itself in the fever swamps of the right for so long now, nobody who writes for it would presume to try to write for us.

As a matter of fact, this ukase is referred to in the current issue of the American Mercury as the first offensive against it by the conservative movement in the fifties.

Q And could you describe for us the controversy with respect to the John Birch Society, how that arose and what position you took with respect to it?

A Well, the John Birch Society was founded, I think, around 1958 or 1959. At that time it had two central documents, one of them widely circulated, the other fastidiously protected.

The first was called The Blue Book, and The Blue Book, for all that it is, I think, garbled and misguided, is not, in my judgment, offensive in any fascist sense; such is my memory. I haven't read it in 15 years.

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The Black Book, however, offers a key to an historical understanding of what's happened in America in the last 25 years, and that key, I kid you not, is that Eisenhower was an agent of the Soviet Union.

Now, the existence of The Black Book was not made public until about 1960 or '61. At that point a great many people who were shocked by it were reassured by the leader-ship of the John Birch Society on the grounds that this was the private intuition of the founder Robert Welch and by no means governed his analysis of contemporary affairs, and it was purely up to individual members of the John Birch Societ to decide whether they found plausible the analysis based on Mr. Eisenhower's membership in the Communist Party.

We at National Review were willing to put that thesis more or less on probation, and under the circumstance when we first attacked the Society, in 1962, and when we solicited and got attacks on the Society by people like Senator Goldwater and Senator Tower and various admirals and generals who were then current, we stopped short of condemning the whole of the membership of the Society.

But by 1965 --

THE COURT: Let me get that clear.

THE WITNESS: Yes, sir.

THE COURT: In 1962 the National Review attacked

the John Birch Society?

THE WITNESS: Correct.

THE COURT: But in a limited way?

THE WITNESS: Yes. We attacked the leadership.

But we did not say that membership in the Society was in and of itself evil, because we made the distinctions I have just elaborated.

But in 1965 we devoted an extensive issue of the magazine to showing that in fact the harnessing bias of the Society and its analysts was rooted in this assumption that critical figures in America were agents of the Soviet Union and that under the circumstances it could no longer be thought that the majority of the members of the John Birch Society rejected that analysis, that since there was a consistency stretching now over a period of four or five years, that showed the extent of Mr. Welch's impregnation of the literature of the John Birch Society.

Under the circumstances we began in 1965 attacking it corporately rather than merely its leadership.

Q In Plaintiff's Exhibit PX-19, page 2, and this is a journal that Dr. Littell assembled after this case was started from materials alleged to have been in hand before, there appears the following comment:

"In Special Feature NR-10 1965, pages 914F, on the

1	jglm Buckley-direct 14
2	JBS and conservatism, no direct attack, simply expedient
3	argument that that type of extremism does the cause more
4	harm than good."
5	MR. BLASBAND: Objection, your Honor. Any reference
6	to a document not in evidence that is a document of Dr.
7	Littell's is completely out of order.
8	THE COURT: Sustained. We premarked these exhibits
9	to save us time. But if you are going to refer to anything
10	or read anything
11	MR. MAHONEY: You want me to offer it in evidence?
12	THE COURT: Yes.
13	MR. MAHONEY: Fine. I offer this document in
14	evidance.
15	MR. BLASBAND: I object.
16	THE COURT: Let me see that.
17	(Pause.)
18	THE COURT: Doesn't this come from Dr. Littell?
19	MR. BLASBAND: It is a document of Dr. Littell,
20	that's correct, sir. It was produced on a pretrial
21	examination.
22	THE COURT: How was it identified on the pretrial
23	examination?
24	MR. MAHONEY: I think it was Exhibit 14 on one of
25	the depositions.
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THE COURT: I just want to save time here. I assume that Dr. Littell will be asked about this in due course, but he isn't on the witness stand now.

I assume, since he produced it, that this reflects summaries of articles and so forth that he made up over the years, namely back in '63, '64, '68, '69 and so forth, isn't it?

MR. BLASBAND: I think it is. But I think you could ask Dr. Littell. I wouldn't want to answer for him. I don't represent him, your Honor.

THE COURT: Right. I'll take it subject to connection.

'IR. BLASBAND: Could we have an offer of proof on it, your Honor? I think that might crystallize the issue.

THE COURT: It is a non-jury case and it seems to me what Mr. Mahoney is trying to do is to simply use this summary of a particular article which does come from Dr. Littell as the basis for some questioning about Mr. Buckley's views.

Isn't that right?

MR. MAHONEY: Yes. And also about the accuracy of the summary.

MR. BLASBAND: It seems to me, your Honor, and this is the last thing I'll say about it now, that what Mr. Mahoney

1	jglm Buckley-direct 16
2	is doing is setting up a straw that may or may not be an
3	actual straw and then having Mr. Buckley knock it down. We
4	don't even know if it will be a straw in this case.
5	'IR. MAHONEY: It is the doctor's exhibit. If he
6	wants to withdraw it, that's fine with me.
7	MR. BLASBAND: It is not
8	THE COURT: Let's go ahead. I'll receive it.
9	DR. LITTELL: Your Honor, my question would be
10	whether I might see it.
11	THE COURT: Sure.
12	DR. LITTELL: I am deaf in my right ear and I can
13	hear only about half of what is said.
14	(Pause.)
15	THE COURT: I just don't want to interrupt this
16	witness' testimony with having to examine Dr. Littell on the
17	floor. That just isn't the way to conduct the trial.
18	What part are you referring to?
19	MR. MAHONEY: I am referring to the part of page 2
20	of PX-19, which starts, "Special Feature NR" it is the
21	fourth paragraph from the bottom on page 2.
22	THE COURT: I'll allow you to ask about that porti
23	And as far as the whole document, we'll reserve on whether t
24	whole document comes into evidence or not. But you can ask

Okay.

him about that portion.

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MR. MAHONEY: I will have a question on some other portions too, your Honor.

Mr. Buckley, quoting again from PX-19, the paragraph therein --

- Am I allowed to see that?
- Yes, sure. The paragraph here states:

"In Special Feature NR-10 1965, pages 914F, on the JBS and conservatism, no direct attack, simply expedient argument that that type of extremism does the cause more harm than good."

Mr. Buckley, is that, in your judgment, an accurate summary of what was stated in that special feature?

- A No. It is grossly inaccurate.
- In what respect?

In every respect. The feature in question in 1965 was a forthright repudiation of the Society and, as I said before, a repudiation of the thesis that the leadership of the Society was to be distinguished from its membership.

At this point we said the membership is responsible for its leadership and, under the circumstances, would have to bear the onus of that association.

MR. BLASBAND: Your Honor, may I move to strike the witness' testimony? He characterized a document that isn't before the Court. And I don't want to take up the Court's

THE WITNESS: As I understand it, your Honor, it is alleged by Dr. Littell that my single objection to the John Birch Society in that article was that it was not useful to

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the conservative cause, rather than a more comprehensive objection, which would have cited, for instance, its moral inadequacy. In fact, in my analysis I used the summation that it was guilty of "paranoid and unpatriotic drivel."

I don't know how to say something more comprehensive than that.

MR. BLASBAND: Your Honor, I renew my objection.

THE COURT: Okay. Overruled.

MR. MAHONEY: Your Honor, also --

THE COURT: Just to explain the ruling, I think you are asserting a kind of best evidence rule objection. I assume that Mr. Buckley is familiar with the articles that appeared in the National Review, certainly if he says he is, and I think he can testify as to what they say to the extent it is relevant.

It seems to me, as part of a background of the events of '68 and '69, there is some relevance in hearing his critique of certain views that appear in the files and notes of Dr. Littell. So let's go ahead.

MR. BLASBAND: It is a bit difficult to crossexamine someone, your Honor, when he characterizes a document and we don't have the document.

THE COURT: You'll have it.

MR. MANIONEY: The document is on its way.



THE COURT: It will be here.

MR. MAHONEY: The document is on the way.

THE COURT: Okay, Mr. Mahoney. Go ahead.

BY MR. MAHONEY:

Mr. Buckley, the distinction between the responsiand irresponsible right, to which you testified, do you reg that as an important distinction in terms of your career an your career purpose and your livelihood?

- A I regard it as absolutely crucial.
- O And why so?

A Well, it is crucial from several points of view.

To begin with, professionally it is crucial because, if one gets a reputation of being irresponsible, one loses that particle of one's audience that one most solicits. If people feel that you are irresponsible in your use of facts or that you are amoral in the drawing of distinctions, you simply are turned off, the audience that you have been working to react over a period of years is lost to you.

And it can happen very suddenly. It certainly happened to Agnew, for instance, very suddenly. That was on a matter of a very formal crime, but it seems to me that an analogy to what Agnew did would be on the part of an editor or a writer to be caught up misusing facts, making up facts, declining to make basic distinctions, distorting

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intentionally. And that is the cause of my concern.

Q Well, aside from the question of professional practices, is it also important, in terms of what you might call your overall life enterprise, to distinguish, at the level of points of view, between the responsible and the irresponsible right, say you and the John Birch Society?

MR. BLASBAND: Objection. Leading, your Honor.

THE COURT: Overruled.

A Yes. It would take me maybe a whole minute to answer that.

Q You've got a minute.

A One has to understand that it is a part of the social sanction exercised against unpopular points of view to find in them such weaknesses as they are guilty of for the purpose of discrediting them.

that conservatism was an intellectually discredited doctrine, that its advocates were primarily looking for ways of sublimating their interest in monopoly or ways of extorting from the public or ways of merchandising death or whatever, and under the circumstances it became especially important to cultivate one's reputation.

And I undertook to do that, not, I hope, merely because it was professionally useful, but because I felt it

temperamentally imperative.

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And under the circumstances it seems to me that one has to be all the more careful if one is defending a position that others are quick to attack and to assign the least disability to for the purpose of discrediting it through circumvention.

O Mr. Buckley, when did Dr. Littell first come to your attention?

A I think he first came to my attention in the summe of 1967 when, at National Review, we received a clipping reporting on a speech he had allegedly given to the National Education Association in Minneapolis.

O And what occurred thereafter?

A What then happened was that in the National Review Bulletin, which is the alternate publication of National Review, a synopsis of the snyopsis was reported. That is to say, a paragraph summing up the summation that appeared in the Rocky Mountain Daily News was published.

Sometime after that I received --

Q Just for a moment, I show you the exhibit that has been marked Plaintiff's Exhibit 14. Is this the article to which you are making reference?

A It is the editorial, correct.

MR. MAHONEY: I offer PX-14 in evidence.

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THE WITNESS: Shall I resume?

MR. BLASBAND: No objection.

THE COURT: All right. Received.

(Plaintiff's Exhibit 14 for identification

received in evidence.)

THE COURT: This is the same as Exhibit C to the stipulation, is it not?

MR. MAHONEY: Yes.

THE COURT: All right.

MR. MAHONEY: Yes, it is, your Honor.

THE COURT: Okay. Fine. Go ahead.

BY MP. HAHONEY:

Q Mow, if you would, pick up the narrative.

A Sometime after that I received from Dr. Littell a letter remonstrating on the inaccuracy of the report.

Q All right. We'll cover that.

Go ahead, Mr. Buckley. What was the next occurrence

A I carried that letter around with me for a few weeks intending to do something --

THE COURT: I think it would help if we got the document. There was a handwritten memo and thenthere was a letter or so later. So let's pin it down.

MR. BLASBAND: Could we have the newspaper article upon which PX-14 was based?

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	1	jglm Buckley-direct 24
	2	MR. MAHONEY: We are talking about the two-page
	3	handwritten note.
	4	Q Is it DX-B?
	5	A Yes. It is more accurate to call it a note than
	6	letter.
	7	THE COURT: Okay.
	8	Q Here it is. Defendants' Exhibit B. Is Defendant
	9	Exhibit B what you are talking about?
	10	A That's correct.
	11	MR. MAHONEY: I offer DX-B in evidence.
	12	MR. BLASBAND: No objection.
	13	THE COURT: Received.
xxx	14	(Defendants' Exhibit B for identification
	15	received in evidence.)
	16	Q The news clip, we might as well get that while we
	17	are at it. I show you, Mr. Buckley, Plaintiff's Exhibit 16
	18	and ask you if that's the news clip on the basis of which t
	19	August 14, 1967
	20	A It is.
	21	MR. MAHONEY: I offer 16-B in evidence.
	22	MR. BLASBAND: No objection.
	23	THE COURT: Received.
xxx	24	(Plaintiff's Exhibit 16-B for identification
	25	received in evidence.)
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		SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y 791-1020
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Q Did there come a time when you wrote Dr. Littell in response to his handwritten note?

A Yes. I was anxious to see whether in fact we had done him a substantive injustice. So I wrote to him and I said:

"Please examine the report from the Rocky Mountain
News on the basis of which we in turn wrote the editorial
paragraph."

I went to the trouble of digging it up. The editorial paragraph in question had been written by the managing editor of National Review, who is my sister, and she had it in her . les. So I dug it up and sent it to Dr. Littell and asked him to please examine it and then also to please send me a copy of the speech on the basis of which the Rocky Mountain News report had been written so that I could review the question of whether an injustice had been done.

Q And is the letter in which you forwarded this clip
Plaintiff's Exhibit 16-A?

(Handing.)

A Yes.

MR. MAHONEY: I offer PX-16-A in evidence, your Honor.

THE COURT: These have all been stipulated to.

of a document entitled "The Threat of Extremism to Democracy"

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	. 1	jg1m	Buckley-direct	27
	2	Λ	It did.	•
	3	Ó	And is this Plaintiff's Exhibit 15-B a copy	thereo
	4	A	Yes.	
	5		MR. MAHONEY: I offer that in evidence.	
	6		MR. BLASBAND: No objection.	
	7		THE COURT: Received.	
xxx	8		(Plaintiff's Exhibit 15-B for identification	1
	9	rece	ived in evidence.)	
	10	0	Did you thereafter, "r. Buckley, write a col	umn
	11	concerning	g Dr. Littell?	
	12	Λ	No, I didn't really. I wrote a column conce	rning
	13	general qu	destions and illustrated it with the case of	
	14		1. It wasn't a column about Dr. Littell.	
	15		Mr. Buckley, I refer you to Defendants' Exhi	bit A
	16		ou if that's a copy of the column you wrote.	
	17		Yes, it is.	
	18		MR. MAHONEY: I offer Defendants' Exhibit A	in
	19		your Honor.	
	20		MR. BLASBAND: No objection.	
	21		THE COURT: Received.	
xxx	22		(Defendants' Exhibit A for identification	
	23	recei	ved in evidence.	
	24		MR. BLASBAND: Your Honor, sorry to interrup	t. I
	25		understood that when I state that I do not	
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BY MR. MAHONEY:

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Q Mr. Buckley, after this column was published and

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Q Mr. Buckley, you are looking at an identical copy of what has been marked for identification as Plaintiff's Exhibit 42. Does this comprise the special feature on the John Birch Society which appeared in the National Review of October 19, 1965?

No, it does not. It is one part of it.

Buckley-direct

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come down.

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THE WITNESS: No, it hasn't.

THE COURT: All right. We'll receive that part.

All right. Exhibit 42 is received.

(Plaintiff's Exhibit 42 for identification received in evidence.)

MR. MAHONEY: Your Honor, in light of the course of the developments this morning, we'll put this in at a later time. I don't have it here right now but we will have the entire issue.

THE COURT: All right.

Mr. Buckley, referring back now to Plaintiff's Exhibit 17, a letter to you from Dr. Littell dated February 14, 1968, what was your reaction upon receiving that letter and where did you receive it?

MR. BLASBAND: Your Honor, I object.

THE COURT: Sustained.

- Where did you receive the letter? ()
- A Physically?
- 0 Yes.
- Λ In Switzerland.
- And what was your reaction upon receiving the Q letter?

MR. BLASBAND: Objection, your Honor.

THE COURT: Sustained.

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	1	jglm Buckley-direct 32
	2	Q Did you, upon receiving the letter, reply to
	3	Dr. Littell?
	4	A I did.
	5	Q Did you reply immediately upon receiving it?
	6	A Within seconds.
	7	Q I refer you to Plaintiff's Exhibit 18 for identif
	8	cation and ask you if this is the letter that you wrote in
	9	reply.
	10	Λ It is.
	11	MR. MAHONEY: I offer Plaintiff's Exhibit 18 in
	12	evidence, your Honor.
	13	MR. BLASBAND: No objection.
	14	THE COURT: Received.
xxx	15	(Plaintiff's Exhibit 18 for identification
	16	received in evidence.)
	17	O Thereafter did there come a time when you reproduc
	18	portions of these two letters, or a portion of his letter and
	19	all of your letter and notes and asides column in National
	20	Review?
	21	A Affirmative.
	22	O And I refer you to Defendants' Exhibit D for
	23	identification and ask you if that is the column in which
	24	this reprinting occurred.
	25	A It is.
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	1	jglm Buckley-direct 33
	2	THE COURT: What is the last exhibit number, please
	3	MR. MAHONEY: This last one is Defendants' Exhibit
	4	D, your Honor.
	5	THE COURT: Okay.
	6	Are you offering that?
	7	MR. MAHONEY: I offer Exhibit D in evidence.
	8	THE COURT: Received.
xxx	9	(Defendants' Exhibit D for identification
	10	received in evidence.)
	11	Q What was your reason for publishing, or including,
	12	the notes and asides in this exchange?
	13	MP. BLASBAND: Objection.
	14	THE COURT: Sustained.
	15	Q Did you have any further communication with Dr.
	16	Littell thereafter?
	17	A Let me sec. I don't think so. No. Let me sec.
	18	I don't believe so, no.
	19	Q Now I show you a copy of a book "Wild Tongues," a
••	20	handbook of social pathology by Franklin II. Littell, and ask
	21	you if you have ever seen this before.
	22	A Yes, sir.
	23	MR. MAHONEY: Your Honor, I don't believe this is
	24	included in the numbered series of exhibits.
	25	THE COURT: Let's get that marked.

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lawsuit? It is.

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MR. BLASBAND: If I may, I don't understand that

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And is that passage the basis upon which you commenced this

Mr. Mahoney was talking about the entire sub-chapter entitled "The Fellow Traveler" or a portion thereof, because the Complaint only refers to a portion of that sub-chapter. So I think we ought to have some clarification of that question.

THE COURT: The Complaint is very clear and includes the entire section of "The Fellow Traveler," except for the last two paragraphs.

MR. BLASBAND: That's correct.

THE COURT: I assume you are sticking to the Complaint, right?

MR. MAHONEY: Your Honor, I believe that those are certainly the more libelous passages. But if in the course of the examination it should develop that there is a libel concerning the last two paragraphs, I would certainly move to conform the pleadings to the proof under 15(b).

THE COURT: I think it is important to be aufully clear on that. As of the present time you are sticking to the Complaint, right? The plaintiff is sticking to the portions in the Complaint and limiting his libel claims to those, or is he not?

MR. MAHONEY: I think, your Honor, that I should say at this time that we would not want to preclude a claim that there was a libel in the last paragraph.

THE COURT: It is not a matter of precluding a

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claim. What is your claim right now?

MR. MAHONEY: All right, your Honor. I would say that there are libels contained in that last paragraph; not in the last paragraph, the quote from the pilot. I think that is non-libelous. But in the preceding paragraph I would say that we do claim that the preceding paragraph does contain libels.

THE COURT: So you are moving to amend your Complaint to include the next to the last paragraph as part of the libelous material.

MR. MAHONEY: Yes, your Honor.

THE COURT: Any objection to that?

MR. BLASBAND: Indeed yes, your Honor. Five years after he brings his lawsuit I think it is highly improper for him to amend the Complaint that specifically defined the libel. Indeed, it would raise the question as to whether we should have some pretrial examination on the parts that have been omitted and now that the plaintiff seeks to insert.

MR. MAHONEY: If I may say, there has been multitudinous pretrial examination on this part, as on the other parts.

THE COURT: Mr. Blasband, as I understand from your brief, you have actually relied on that next to the last paragraph as indicating material that you feel is advantageous

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to the defendant MacMillan?

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MR. BLASBAND: Yes, sir.

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THE COURT: So there has been some focus on that paragraph.

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MR. BLASBAND: Indeed. Now --

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THE COURT: What part of that paragraph would prejudice you if we permitted the libe claim to cover that paragraph?

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MP. BLASBAND: Well, we certainly have not had the opportunity to bring an investigation as to the truth, for example, as to the first sentence. That would also pertain to part of the second sentence, except Dr. Littell's statement that Mr. Buckley is not in the direct control of any subversive party. And it would also apply to the remaining

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parts of that paragraph, your Honor.

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I think it is outrageous that they are seeking to amend at this point. This is five years after this lawsuit

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was instituted.

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MR. MAHONEY: Your Honor, if I might reply briefly, the Complaint wasn't drawn in my office. The entire examination has been on anything that Dr. Littell had to support, anything he had in his file on Buckley. That's what they brought in.

We've had three or four examinations.

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examinations have gone all through this area. Mr. Buckley's relationship to him, criticism of the John Birch Society, Dr. Littell's file, just to take on example, all this has been within the purview of the examination, and administratively perhaps a motion should have been made.

MR. BLASBAND: That is not my understanding of the examination. My understanding of the examination is that you wanted Dr. Littell to bring in all of the statements upon which you based your claim of libel.

MR. MAMONEY: We asked him for his entire file on Mr. Buckley, and he said in chambers and he said on the record in the depositions that that is what he is going to introduce, anything he had on Mr. Buckley.

THE COURT: I don't mean to run your case for you, Mr. Mahoney, it is not my job, but I would think that there isn't a lot of utility in trying to drag in that next to the last paragraph.

It seems to me the real problems in the case are raised by the earlier part, the paragraphs about the fellow traveler characterization, the paragraph about the analogy between Mr. Buckley and Westbrook Pegler, and the libel by Pegler against Quentin Reynolds. It seems to me those are the things that raise the problems in this case.

Now, that other paragraph is a kind of commentary

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on Mr. Buckley's rights, and I think there could be some justice in Mr. Blasband's claim that to all of a sudden include another paragraph in the libel claim could create problems for him.

I am going to deny your motion to amend the claim and will stick to the part that is referred to in the Complaint.

MR. MAHONEY: Very well, your Honor.

I don't want to have it taken by an acquiescence that there is no difference of opinion. But I understand the Court's ruling.

BY MR. MAHONEY:

- Q To begin with, the caption "The Fellow Traveler," is that a phrase with which you are familiar?
 - Λ It is.
 - Q What do you understand that phrase to mean?

MR. BLASBAND: Objection, your Honor. The writing speaks for itself. If I may, I would like to continue an objection to any attempt of the witness to characterize the meaning of what is written in this book.

MR. MAHONEY: If I might reply before you rule,
Mr. Buckley has been engaged in controversy about just this
sort of thing for a period of 20 years and it is relevant,
the fair intendment of the phrase is certainly relevant, how

it is understood in the intellectual community. And if
Mr. Buckley, in Mr. Blasband's opinion, mischaracterizes it,
he has ample opportunity for cross-examination.

MR. BLASBAND: Insofar as this particular phrase is concerned, the author himself gives the definition of the fellow traveler in the work. I don't see how we have to go outside the work to determine whether these words are libelou or not libelous.

MR. MAHONEY: He has used the caption separately.

the book and the other materials that were given to me before the trial, I personally felt the need to explore these terms and their use. I personally haven't used these terms very much, I haven't had occasion to, so I would be glad to hear from Mr. Buckley and from anybody on your side some background about how these terms were used and what they meant to the various people who used them.

That would, frankly, assist me. So I would like to receive the evidence and I know this will come from Mr. Buckley's point of view. Certainly I would be happy to have evidence if there is another point of view, and we'll have that.

I don't want to get into a discussion right in the middle of the witness' testimony, but it seems to me that

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Now, if somebody says that Mr. Buckley is a member of the American Nazi Party, whatever the name of that party is, then that was a statement that has a fairly clear-cut, crystallized meaning. Or if they said somebody is a member

one of the problems I've got to grapple with in this case is

of the Communist Party, that is a fairly clear-cut thing.

Now, if you say somebody is a fascist or a communist, that is a little less clear-cut meaning. It is talking not about membership in an organization, but an ideology. Again, we talked about spectrums, so we are talking about spectrums of definition.

Then we come to the concept of fellow traveler, and the question in my mind is how clear-cut that is. Is it a kind of vague concept that could have a lot of meaning, some perhaps libelous, some not so libelous or even not libelous?

DR. LITTELL: Your Honor --

THE COURT: Just a moment. Let me try to get through my problems.

Is it the kind of a term that has been bandied around so much that people have become sort of used to it so that it may not be -- the first question is whether this is a libel.

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MR. BLASBAND: That's correct, your Honor.

THE COURT: And I am trying in a clumsy way to articulate the problems in my mind, and that very much depends on the meaning of these words to readers, to author to people who are using the words and writing about the wor

So it is very important to me to have evidence on the meaning of these terms, both Mr. Buckley's viewpoint an any other viewpoint.

MR. BLASBAND: I'll just be brief, your Honor, if I may. What I am submitting to the Court is that, as far a "the fellow traveler" is concerned, the meaning of that word in this context is what is expressed by Dr. Littell. That' all I am trying to say.

THE COURT: That doesn't end it, because the concept of libel is something that exposes the plaintiff to calumny and ridicule and so forth in the community. So how does the community who read this book, would read this book how would they read and what would they think when they saw someone referred to as a fellow traveler? So I think we've got to get some ideas on what the terms mean.

Okay.

MR. BLASBAND: I think Dr. Littell would like to address the Court, your Honor.

THE COURT: All right. Go ahead.

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DR. LITTELL: If I may, I would think that there are two questions.

One would be what the author meant in writing, in using this term. The other is the question whether expert opinion is desired, which may not be the author's, which may not be the plaintiff's, but could be twelve other people's.

I would think that the first question really, what was intended, would be the key question.

THE COURT: I guess there are two questions, what you intended and what would some reader think when he read the terms.

Okay. Go ahead.

MR. MAHONEY: Your Honor, at this point, before proceeding, to set the stage for this next passage, I would like to read certain portions of Dr. Littell's deposition into the record.

THE COURT: All right.

What is the date of that deposition?

MR. MAHONEY: This is the deposition dated December 21, 1973.

MR. BLASBAND: Could you wait for a minute while I get it?

MR. MAHONEY: Sure.

(Pause.)

MR. BLASBAND: What page are you dealing with?

MR. MAHONEY: I'll start on page 141.

MR. BLASBAND: Your Honor, before we have these read in, portions of the deposition transcripts read into the record, it might be helpful, in order to frame an objection, if we could have the passage designated and give me an opportunity to read it.

MR. MMHONEY: We don't have a jury. Can't you object as we go?

THE COURT: I think let's read along. I assume you are not going to read huge portions.

MR. MAHONEY: No.

THE COURT: What are you going to read from?

MR. MAHONEY: 141 to 142. The passages I want are at pages 141 and 142 and 145 and 146. There may be just a little that is needed to set the stage to understand the question and answer that I am looking to.

THE COURT: All right. Go ahead.

MR. MAHONEY: Page 141, discussing certain documents that were being introduced in evidence.

"Question: Did they also perform the same function that the other exhibits heretofore reviewed did that were received from Mrs. Brookes? Did it essentially perform the same function and support the same contention of yours in the

passage of 'The Fellow Traveler'?

"Answer: That has to do with the term 'Fellow Traveler' and the term 'ideological taint' as defining the role of such.

"Question: How did that support the definition of The Fellow Traveler!?

"Answer: Well, again, a person can write a dissertation on a fellow traveler, but in a way you can identify a person who is not a card carrying member under discipline, and that is by friends, by letterheads, by events, by appearances on various platforms and the rest of it. It is a rule of thumb, but it is a reasonably accurate one.

"Question: This is a rule of thumb which you follow, in other words, which is the criteria you set up in identifying a fellow traveler?

"Answer: No, which you can read in 20 different specialists on political extremism.

"Question: I'm not sure you answered the question as to what function did these documents serve in preparation of the passage 'The Fellow Traveler.'

"Answer: They convinced me, along with the other data, that in the period which we are discussing, which is up to 1968 roughly, Mr. Buckley's role is that of a fellow

"Question: On page 11 of that article the name of

Well, let me rephrase the question.

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"Can you pinpoint one or more phrases or sentences in the passage 'The Fellow Traveler' which are supported by this particular article?

"Answer: Well, it has to do first with the function

don't know whether we want to take the time to go through and pick out the salient sections after the generalizations at the beginning, but one of the obvious ones is the question of whether you are dealing with a conservative in the proper sense of the word, the question of the streak of ideological taint, and do you want to ake time to see if we can spot sommore.

"Question: I don't think that is necessary. What I would like to ask you is, would you refer to this article as one of the general sources similar to those we have reviewed earlier today?

"Answer: Yes.

"Question: This did not form the particular basis in and of itself for any of the statements?

"Answer: No. It is part of the mass of material which convinced me that I was dealing not with conservatives so much as with a person who is in the orbit of the radical right."

THE COURT: We'll take a recess when you are finished reading.

MR. MAHONEY: I am finished reading at this point
THE COURT: We'll take a recess.

(Recess.)

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THE COURT: Let me just make an aside at this point so we don't get caught short later in the trial.

The analogy to Westbrook Pegler on page 51 of "Wild Tongues" and the reference to the situation between Westbrook Pegler and Quentin Reynolds, I assume that the most publicized description of that situation was the Louis Nizer book, and I think it might be useful to have in court the Louis Nizer book. I don't happen to have a copy. But, in order to help me to understand that reference and that analogy, I've got to have something, and I would think the most convenient reference would be the Nizer book.

The Court of Appeals' opinion in the literated case is not terribly full as far as its description of what the case was about. So can somebody get a copy?

MR. MAHONEY: We'll do that your Honor.

THE COURT: All right. And I would also like to know when the Nizer book first came out, how many editions it went to, get some facts about the number of copies sold, because it would seem to me that to anyone reading page 51 of "Wild Tongues" who had read the Nizer book that might have a certain significance.

MR. BLASBAND: Your Honor, if I may, I am somewhat troubled by your Honor's remarks. I think that the passage in "Wild Tonques" is perfectly clear.

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The intent to the passage on its face is that Mr. Buckley could be taken to court, and I don't see any analogy to Westbrook Pegler per se except that he is saying Buckley could take him to court, like Westbrook Pegler was taken into court

MR. MAHONEY: For lying.

THE COURT: The danger of a judge asking questions in the middle of a trial is that everybody thinks he has decided the case. I haven't. But it is a question. And so that we don't have a big gap in the record, I would just appreciate it if somebody has in court the Nizer book and some information about it.

Now, maybe it is of no help at all, but it might, on the other hand, be of help. So, if someone could get that, it may prove to be useful.

Okay.

MR. MAHONEY: We'll undertake to do that, your Honor.

I erroneously advised the Court that I finished. There is one further brief question that I want to read into the record from Dr. Littell's deposition. It is the same deposition.

MR. BLASBAND: Your Honor, if I may, excuse me. I have another problem with the procedure. There is no

claim that he has been libeled by being analogized to Westbrook Pegler in the Complaint.

MR. MAHONEY: Your Honor, let me respond to that.

The question is whether the passages quoted in the Complaint are libelous and those passages are quoted.

Now, in paragraph 4 of the Complaint there was an interpretation given as to why they were libelous. But I will certainly urge upon the Court that, should the Court conclude that the passage is libelous but that the libel is not properly described in paragraph 4, then paragraph 4 is surplusage in the first place and, in the second place, that there can be no clearer instance of an appropriate motion to amend the pleading to conform to the proof.

MR. BLASBAND: I would oppose that most vigorously. The plaintiff has set forth specifically the manner in which he claims he was libeled. Westbrook Pegler was not among those claims, and now we have a whole new ball game, if your Honor allows this.

THE COURT: I don't agree with that. In the first place, the Complaint quotes verbatim the paragraphs from "Wild Tongues" claimed to be libelous. Then the Complaint goes on and makes an attempt to characterize the meaning of those paragraphs in a kind of summary fashion.

First, I would not feel that the plaintiff is

limited to the characterization in paragraph 4. The whole paragraphs from "Wild Tongues" are quoted verbatim, and it seems to me that it is open to the plaintiff to argue in any appropriate way the libelous nature of those paragraphs.

Now, even focusing on paragraph 4, which tries to summarize what those paragraphs may have meant, that paragraph does charge that the paragraphs said that Mr. Buckley's own writings are false and malicious and have been exposed as such.

Now, that is saying that the paragraphs alleged to be libelous were libelous in part because they called Mr. Buckley's writings false. That's what this material about Westbrook regler certainly could be construed as saying. It says, "Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a laws_it, Buckley could be taken to court by anyone of several people who had enough money to hire competent counsel; and so forth.

It seems to me that I read the paragraph 4 summary as covering that portion of the alleged libelous paragraphs.

Am I wrong?

MR. BLAS AND: Maybe I'm misunderstanding your Honor. I understood your Honor to say let's bring Westbrook Pegler in, find out all about him and let's see how Mr. Buckley is being analogized to Westbrook Pegler.

THE COURT: No, no, no. I probably spoke very loosely. The problem is that Dr. Littell in "Wild Tongues" at page 51 starts a sentence and says, "Like Westbrook Pegler."

Now, when he says "like Westbrook Pegler," the fellow he says is like Westbrook Pegler is Mr. Buckley.

Then he goes on and he says, "Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit" --

Now, in reading that I had a vague notion of what the situation between Westbrook Pegler and Quentin Reynolds was. But that was a long time ago and all I am saying is, in order to give content to that passage and make me understand the analogy and the problem, I have got to know what the reference is. And I'looked in the Court of Appeals' opinion on the litigated libel case and they don't say much about it. It is a very short opinion.

I did recall that Louis Nizer in his book has a whole chapter on it. That is the book "My Life in Court."

So that, it seems to me, might be helpful to explain the reference.

Now, there is another point. Aside from just using the Louis Nizer book to explain the reference, because maybe you would have objections to doing that --

MR. BLASBAND: I do, your Honor.

THE COURT: But it seems to me that the Louis Nizer book was really a runaway best seller, if my memory is correct and that in the minds of people who might read "Wild Tongues" the meaning of this reference in "Wild Tongues" might have been augmented or explained, or however you want to put it, by the fact that this situation had been explained in great detail in Louis Nizer's best selling book.

In other words, what is the effect on a reader?

Let's just take a reader who had read Louis Nizer's book and then he comes along and he reads "Wild Tongues."

Now, when he reads about Westbrook Pegler and Quentin Reynolds, that will trigger a memory, obviously, of what was said in Louis Nizer's book. So that will have an effect, it seems to me, upon the impact on the reader of "Wild Tongues."

I know this is tortuous, but, frankly, it seems to me, this paragraph, the analogy with Westbrook Tegler, raises a crucial issue in the case we are trying here and, again, I think we ought to get all of the relevant material.

Let's let that go for now because we haven't admitted the item. All it was really building up to was trying to get the material into court, if it should be helpful.

MR. BLASBAND: Your Honor, let me make one last remark about this.

THE COURT: Yes.

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Honor?

MR. BLASBAND: Well, and last remarks.

Number one, the passage that you just referred to seems to be quite clear. If there is anything that is being said, it is simply that Mr. Buckley could be taken into court.

I can't read that--and if your Honor reads it differently, I'm sorry, I just don't understand it--that there is any other analogy to Westbrook Pegler. I never read the Louis Nizer book, but this statement just on its face just says Mr. Buckley can be taken into court, period.

THE COURT: We can --

MR. BLASBAND: The second thing is --

MR. MAHONEY: Are we having summations now, your

THE COURT: I am afraid I opened this door.

I'R. BLASBAND: The second thing is, your Honor, and I say this most respectfully, Mr. Mahoney is an expert in 15, field. He is a marvelous lawyer and his predecessor is a marvelous lawyer.

They framed a Complaint. They did not frame a Complaint alleging a comparison to Westbrook Pegler. They said specific things of how this was supposed to be libelous, this material in "Wild Tongues." Westbrook Pegler was not included.

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And it seems to me now your Honor is really invit a new cause of action, and it seems to me that, plaintiff's counsel being so competent, I'm just disappointed that we ha this issue that seems to be in the wings which has never be in the wings before.

THE COURT: I am not inviting a new cause of acti but I just was afraid, reading this over over the weekend, that maybe everybody in the courtroom would understand thes references better than I did. I just -- and I don't want the caught short on the record in this case.

Me'll go shead with the examination of 'r. Buckle
MR. MAHONEY: Your Honor, just to clear up a loss

end here, I had mistakenly told you that I was finished.

There is one more passage that I want to read into the recofrom Dr. Littell's deposition.

Now we are talking on pages 153-154, and it is the examination continued with respect to the relevance of certain documents to Dr. Littell's charges against Mr. Buckl

"Question: Dr. Littell -- this is Exhibit 31 -there is no particular offer indicated that I can see on thi
Just National Review and the end of the article and a date
June 5, 1962. Is this an editorial of the magazine?

"Answer: I think that comes from the editorial section probably, since it is not a signed article, and I know

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that Mr. Buckley put out a letter at this time also defending Mr. Schwartz, criticizing the ADL.

"Question: Will you briefly describe the relevance of this article to the publication?

"Answer: In the list of attacks that were made on me and on the Institute for American Democracies, Fred Schwartz played a very prominent role. He wrote 'Professional Anti-Communist Waves" and Mr. Buckley's defense of Fred Schwartz and an attack on the Anti-Defamation League seems to me to be a part of the general picture.

"Question: Which is?

"Answer: Which is Mr. Buckley has been not a radical rightist and not a fascist himself, but heavily in their magnetic orbit. I'm talking up to 1968. I want to emphasize that point. I think he has actually played a different public role since then."

Now two other very loose ends, your Honor. We have introduced into evidence Plaintiff's Exhibit 17, the letter to Mr. Buckley from Dr. Littell dated February 14, 1968. I want to call to the Court's attention that although there are no copies shown on Plaintiff's Exhibit 17, that on Exhibit II to the stipulation of fact that has been submitted to the Court previously, the notation is borne at the bottom of that letter "blind copies sent to Charles R. Baker, Joseph E.

	4	the John Birch Society column, and we have that now in court
	5	I would ask the reporter please to mark this for identifica-
	6	tion, the next number, whatever it is.
xxx	7	(Plaintiff's Exhibit 43 marked for
	8	identification.)
	9	BY MR. MAHONEY:
	10	O Mr. Buckley, I show you Plaintiff's Exhibit 43 for
	11	identification and ask you whether this is the totality of
	12	the special National Review issue on the John Birch Society
	13	dated October 19, 1965.
	14	A It is.
	15	O And does that totality include and incorporate the
	16	three columns which you wrote which were separately introduc
	17	earlier this morning as, I believe Exhibit 41?
	18	A It does.
	19	MR. MAHONEY: I offer Exhibit 43 in evidence, your
	20	Honor.
	21	MR. BLASBAND: Objection, your Honor.
	22	THE COURT: Overruled. Received.
xxx	23	(Plaintiff's Exhibit 43 for identification
	24	received in evidence.)
	25	Q Mr. Buckley, getting back to where we were sometim
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And finally, we talked earlier this morning about

Wihlein, Jr., and Dr. Will Herberg."

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ago, in the course of your public career and engagement in public controversy, have you come upon any knowledge or understanding as to the meaning of the phrase "fellow traveler"?

And what do you understand that phrase to mean? MR. BLASBAND: Your Honor, a continuing objection. THE COURT: Overruled.

The term "fellow traveler" had been used historical1 to distinguish between someone who is avovedly a member of the movement and someone who is not avowedly a member of that movement but seeks to serve that movement's purposes by a variety of activities.

I suppose the most frequently cited historical example of how fellow travelers were tripped up was the change in the position of a number of people respecting the question of whether the United States should go to was at the moment when hostilities broke out between the Soviet Union and Nazi Germany.

Up until then, during the duration of the Hitler-Stalin pact, they were very much opposed to the United States going to war, but on--June 19th, was it? -- June 22nd they switched very abruptly.

This is characteristic of the state of Thralldom

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of the follow traveler to the movement to which he adhered.

I can go on at any length that you want about this.

Q hoes this relationship usually connote or denote a conscious following or allegiance to or a conscious relationship of the fellow traveler to the movement?

MR. BLASBAND: Objection, your Honor. Leading.

THE COURT: Overruled.

A Usually but not always.

THE COURT: Just a minute.

(Pause.)

THE COURT: You are saying that usually but not always it connotes a conscious what?

THE WITNESS: A conscious adherence to the movement one is serving as a fellow traveler.

THE COURT: Okay. Go ahead.

THE WITNESS: It would be more precise to say almost always.

Q Now referring to the passage at pages 50 to 52 in the book "Wild Tongues" entitled "The ellow Traveler," would you agree with the statement there that the role of the fellow traveler is as dangerous to social health and as important to building up -- excuse me. Would you agree that that role is as stated there, dangerous to social health and important to building up totalitarian parties?

MR. BLASBAND: Your Honor, I move to strike the

witness' testimony. Here we are getting opinion, and I don't

MR. MAHONEY: Your Honor, I think it can be

DR. LITTELL: Your Ponor, are we to understand this

THE COURT: I don't know whether that is a helpful

see where it is the province of this plaintiff to give

conceded, has been engaged in public controversy all his

characterization. I guess I just co back to what I said

relates to the meaning of these terms and the meaning to

people who would read this book. So anything that can help

me understand the meaning of these terms would seem to me

before the recess, that the first question in the case really

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A I do.

opinion in this case.

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THE COURT: Just a minute.

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(Pause.)

is entered as expert opinion, then?

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That is the reason I'm letting this material in.
Whether you call it expert opinion or fact testimony, I don't

think that particularly helps us. So I'll overrule the objection and deny the motion to strike.

And further down it is stated that "The fellow

On page 51 it is stated that the most famous type in recent years was von Ribbentrop, and the passage continue with a description of Mr. von Ribbentrop.

Do you know anything about Mr. von Ribbentrop?

A I know he was executed.

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Well, could you elaborate a little bit on his
career, to the extent that you know about him?

But it is true that in the early part of his career he was not a member of the Nazi Party, and the assumption, at lease my assumption as a reader here, is that the author was drawing attention not to the period during which von Ribbentrop was an explicit Nazi agent, but to during the period when he

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THE WITNESS: '33.

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THE COUPT: All right. Did von Ribbentrop thereupon join the government, the Nazi government?

THE WITNESS: I don't remember when he did, your Honor. But --

BY MR. MAHONEY:

O Do you remember his becoming ambassador to Great Britain?

MR. BLASBAND: Your Honor, could we please have plaintiff's counsel refrain from testifying and leading the witness? We are getting --

A The answer is no, I don't remember.

MR. MAHONEY: I was in for a terrible defeat until you intervened.

THE COURT: I assume this is all in the Encycloped Britannica.

MR. MAHONEY: It is judicial notice, your Honor.

THE COURT: I don't happen to know it and it doesn't hurt to have some precision here. We have got a reference to von Ribbentrop. We all know who he is in a vague way. But, as I sit here, I realize I really don't kno much about the chronology of his activities. I am sure we could look it up in any one of a lot of sources.

Now, if the witness remembers the facts, I don't think it is --

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MR. MAHONEY: If Mr. Blasband would perfer, it is in the encyclopedia and you can take judicial notice of it. THE COURT: Is this true, that before Hitler came to power von Ribbentrop was associated with Hitler but he was not a member of the Nazi Party?

THE WITNESS: That's my impression.

Th. COURT: All right. Now, after Hitler came to power, at some point von Ribbentrop became a diplomat for the Nazi government, right?

THE WITNESS: Having served as vice chancellor.

THE COURT: When did he serve as vice chancellor?

THE WITNESS: I don't have the dates, your Honor.

But I think it was '33 and '34.

THE COURT: And then he got into the diplomatic

THE WITNESS: That's right.

THE COURT: Was von Ribbentrop ever part of the Weimar Republic?

THE WITNESS: I don't know whether he was a part of the government or whether he was in the civil service.

THE COURT: Okay. Then he got into the diplomatic work. Was he foreign minister or ambassador, or what was he? THE WITNESS: He ended up being foreign minister

and, as I said a moment ago, concluded the pact with Molotov,

tion of his own person."

Do you regard yourself as needing to be misused and abused to the destruction of your own personhood?

A No.

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Then they go on to say, "The fellow traveler's Q

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responses are essentially feminine, registering the ambivalence of love and hat toward the master and mover."

Is there any master and mover to whom you regard yourself as registering an ambivalence of love and hate?

Well, I'm not widely thought of as being ambivalent. So, if that's the operative word in your question, the answer is no.

Q Is there anyhody to whom you regard yourself as having a relationship that that person acts toward you as a master and mover?

A No.

O Do you regard your responses as essentially feminine?

A No.

Q Going on to the next page, page 51, you say as to, first, the book God and Man at Yale, "It is stated that the book has been soundly exposed and condemned by professors and overseers and loyal alumni for falsely twisting facts and for sheer malice."

Is that a true statement?

A It is half true. It was definitely condemned because its thesis was imcompatible with the thesis that prevailed at Yale University. This was the reason why I wrote it. It was condemned by several critics as being

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inaccurate. It was not in the least inaccurate. It was

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condemned by people who knew far less intimately than I what I was writing about.

As regards malice, there is no malice in the book whatsoever.

O Has it been condemned for sheer malice?

A I don't think so. I think it was condemned for every conceivable reason, but I don't think that was one.

O The next sentence: "The National Review and his"

-- that is, your -- "syndicated newspaper column on the right
frequently print news items and interpretations picked up
from the openly fascist journals."

Does National Review or do you in your news columns frequently or at any time print news items and interpretation picked up from openly fascist journals?

A Frequently, no. Occasionally, yes, for the purpose of denouncing them.

THE COURT: Just a minute.

(Pause.)

THE WITNESS: I would like to add, your Honor, that I don't know of many openly fascist journals. There was a fitful publication put out by the American Nazi Party that was openly fascist, and there are one or two in Italy and in Germany that are reviewed by our foreign correspondents, and

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THE COURT: The main feature is the anti-Semitism?

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THE WITNESS: That's right. I guess what I'm trying to say is that, depending on whom I was talking to,
I would call it openly fascist or not, depending on the requirements of precision.

THE COURT: I don't want to get into this, but the thing that is a problem to me, and I guess it is a problem here in connection with this phrase, really is whether the term "fascism" and the term "fellow traveler" have acquired a kind of loose meaning so that somebody could reasonably call something a faccist journal that wasn't a publication of the American Nazi Party but which might be something put out by a Texas conservative or somebody else.

THE WITNESS: It has acquired a loose meaning but in no case a nonpejorative meaning.

THE COURT: Okay. You go ahead.

BY MR. MAHONEY:

Mr. Buckley, assuming that one were using the word "fascist" in a loose way so as to encompass more journals than might otherwise be encompassed, has National Review frequently or otherwise printed news items and interpretation picked up from the openly fascist journals other than to condemn them?

A I would say absolutely not.

Has National Review ever picked up such news items

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Of course not.

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Has your column been such an agency?

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A It has not.

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Mr. Buckley, have you ever been caught out for misquotations with quotation marks?

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A You mean before the current -- before the proceeding we are talking about?

Q Well, let's take it in two stages: (a) before the proceeding and (b) during the proceeding.

A I would say never in any situation in which it was established that my motivation was sinister or reprehensible. May I make a distinction?

MR. BLASBAND: That is not the question.

THE COURT: Let me have the question and the answer so far.

(Record read.)

MR. MAHONEY: I would submit, your Honor, that he hasn't completed his answer.

THE COURT: Objection overruled.

- A I would like to make a clarification. May I?
- Q Yes.

A There are, your Honor, roughly speaking, two journalistic standards, the one that is observed most rigorously by the very best papers, which is never to put their paraphrases between quotation marks.

The New York Times, for instance, has a very strict rule on that point. Other papers do not, For instance, the Herald Tribune very frequently put paraphrases between quotation marks.

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I have on occasion relied on other people's quotation marks, which turn out to be quotation marks surrounding paraphrases, and once or twice I might have been written by the author to instruct me that in fact the statement I quoted was not his own but was a paraphrase. But in each case it would have been relayed to me as though it had been a quotation.

But even those are so infrequent as to have slipped my memory. The only one that I know the details of is the one which we are transacting, among other things, here today.

O Well, would you go into now the one that we are transacting here today, any instance in the course of this lawsuit where you put something between quotation marks that was not precisely what had been said?

A What is your question?

Q I said, would you go into any incident that's occurred with respect to the subject matter of this proceeding, where you put anything in quotation marks which was not actually a precise quotation?

A Well, is my response supposed to govern the paragraph written by my sister also?

Q I don't think that is germane.

THE COURT: Can you just be more speciff in your question? I assume you are directing his attention to

	corearn specific entings.
3	MR. MAHONEY: All right.
4	Q I direct your attention first to Plaintiff's
5	Exhibit 14, the two-page excerpt from an issue of National
6	Review dated August 16, 1967. I believe that is already in
7	evidence, is it not, 14?
8	THE CLERK: Yes, it is.
9	Q Now, referring to the passage "Another voice of
10	moderation July 1967," to begin with, did you write that
11	passage?
12	A I did not.
13	Q Who wrote it?
14	A It was written by my sister.
15	O That is Priscilla Buckley, the managing editor?
16	A Correct.
17	O Did you see it before it was printed in that
18	passage?
19	A No. I do not edit The Bulletin.
20	THE COURT: This, you are saying, is not The Nation
21	Review?
22	THE WITNESS: No, sir. It is The National Review
2	Bulletin, which comes out on odd weeks.
24	O This is a magazine of how many pages, Mr. Buckle
25	32 pages?
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A 36 to 56.

MR. MAHONEY: A magazine of 36 to 56 pages, your llonor, that comes out on alternate weeks, and a bulletin of eight pages which comes out in the other weeks. This appeared in The Bulletin.

THE COURT: Okay. The National Peview comes out weekly, right?

THE WITNESS: No. Fortnightly.

THE COURT: And The Bulletin?

THE WITNESS: Fortnightly on the odd weeks.

THE COURT: And your sister Priscilla edits The Bulletin?

James Burnham edits The Bulletin. But she is the managing editor.

THE COUPT: And you did not review the August 15th item before it was published; is that right?

THE WITNESS: No. I'm not even present on The Bulletin.

THE COURT: Okay. Go ahead, Mr. Mahoney.

BY MR. MAHONEY:

O Is there anything in The Bulletin which, in this Plaintiff's Exhibit 14, purports to be a quotation of words written or spoken by Dr. Littell but is not?

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FOLEY SQUARE, NEW YORK, N.Y. 744-1034

Q The next item is Defendants' Exhibit A, which is also in evidence, your column for release February 10 or 11, '68. (handing).

Is there any quotation in that colum that is inaccurate to any degree?

A Yes.

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Q Would you identify the quotation and the inaccuacy?

A Do you see the second to last paragraph, third line down, where I say "He will lump together, Hargis, Bundy McIntire Welch and Gerald L. K. Smith,"? Do you see that?

Q Yes.

A Well, I put Welch and Gerald L.K. Smith in in place of McBirnie for some reason. McBirnie was listed as the fourth in that particular grouping by Dr. Littell.

Q All right. And then --

THE COURT: Let's just take a minute and get the Littell text.

MR. MAHONEY: The Littell text -- this is quoted from the letter of February 14, 1968, your Honor, Plaintiff's Exhibit 17, your Honor.

THE COURT: What part of the letter?

MR. MAHONEY: I'm sorry. It is January 14th. It is not the text. It is January 14th. It is Plaintiff's Exhibit 15-A. And the reference is to the first portion of the first sentence of the third paragraph, which starts, "In spite of various manufactured facts widely expressed by Haris, Bundy, McIntire, McBirnie and others of our fascist underworld. That is the reference.

THE COURT: So the letter uses Hargis, McIntire,
McBirnie specifically. The article of Mr. Buckley,

February 10, uses Hargis, Bundy, McIntire, Welch and Gerald L. K. Smith. All right.

MR. MAHONEY: That's right.

O Mr. Buckley, does Exhibit 15-B, the statement, refer to extremism in democracy by Dr. Littell, which was an enclosure to Exhibit 15-A, the letter dated January 14, 1968 from which we have just quoted? Does Exhibit 15-B contain references to Gerald L. K. Smith?

A It does.

O And Robert Welch?

1 It does.

O Mr. Buckley, this substitution of the names -- of the two names Smith and Welch for the one name McBirnie, was that intentional?

A It was not intentional, and it was -- no. The answer is it was not intentional.

O Was the net effect distorting?"

A It was not in the least, in my opinion. I wrote the column based on two documents, one the letter from Dr. Littell and two, the enclosure. The enclosure was a speech in which there were references to Gerald L. K. Smith and to Robert Welch which put them -- which bracketed them exactly with the references to the other three, and apparent my eye elided over the lot. But I would be very surprised i

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Dr. littell would maintain that they belong in separate categories.

O Mr. Buckley, aside from these instances, aside from what you've testified to to this point this morning, do you know of any other in tance where you have been caught out for misquotations" with quotacion marks or any other instances for that matter, in which you have in fact written misquotations with quotation marks whether or not caught out for it?

A Mr. Mahoney, I've written 13 books and 1500 columns and edited the magazine for 20 years, and I. three misquotations. And of those not a single one was malicious.

THE COURT: I don't understand. You say you can't remember as many as three or you can only remember three? TIII: WITNESS: I can remember three.

THE COURT: In addition to what we've just been talking about?

THE WITNESS: In addition to what we've been talking about.

THE COURT: And are those the instances you mentioned earlier, where you have used somebody else's quotations and the author has called your attention to it?

THE WITNESS: Exactly. Your Honor, when I say that I can remember three, maybe some researcher is going to come

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up with more than three. But that's all I remember. And I know that it would be inconceivable that there should be "a pattern of misquotations." We have four researchers whose job it is to make our work as accurate as possible.

() Has anyone else ever accused you of engaging in the practice of misquotations?

A Not in 20 years, no. It is true that in connection with publications of "God and Man at Yale," one or two of the critics said that I misrepresented and misquoted, and there was one episode there which, if you like, I will --

() Yes. Will you?

A It was said by one reviewer that as an index of my misquotations I had alleged that the textbook used by Samuelson called for five percent annual inflation rate, desirable annual inflation rate, whereas in fact Samuelson called only for a three percent annual inflation rate.

I went to the book and looked it up and found that it did indeed say three percent. I was extremely distressed. went back to my notes and my notes said five percent. And it wasn't until two years later that I discovered that the edition that had been used when I was a freshman had in fact said five percent but that in a subsequent edition by Professor Samuelson he had revised his thinking and he had changed that to three percent.

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Q You have described two standards of quotations in the journalistic field: The New York Times standard that you don't put anything in quotes unless it is an exact quote, and the New York Herald Tribune standard that you put in quotes — that it is correct to put in quotes items that are paraphrases knowingly.

A I didn't say it was the Herald Tribune standard.

I said they permitted it.

Q It is a standard practice.

In any event, to what standard do you adhere in your professional journalistic career insofar as quotations are concerned?

A I adhere to the New York Times standard, and I use the device of he said in effect," if I desire to put something in quotes but to protect a person against the possibility that there was a minor error there.

O Mr. Buckley, have you been caught out for repeating radical right malice and rumor in your professional career?

A I think you would have to define the malice.

Suppose somebody says, "in my opinion George McGovern would , make the worst president in the history of America, "Is that malicious?

Q Well, I suppose Dr. Littell will have to tell us later exactly how he meant that to be used. But in the

normal sense I would think that something that goes not to the merits. But I would think malice is something that doesn't go so much to the merits of a controversy but to a question of personal spite or ill will.

A Or evil intent.

THE COURT: Wait a minute. You just frame question MR. MAHONEY: All right.

Well, in the sense of malice as evil intent or spite or ill will towards the target of the writing or statement, have you been caught out for repeating radical right malice and rumor?

A No. If a "radical right organization" uncovered a piece of evidence which I thought should be introduced into the journalistic bloodsteam, I would proceed to do so. But this doesn't happen to be the kind of thing that I am mostly involved in.

If, let us say, if a radical -- if a member of the radical right had discovered that a secretary was paid to spread libels about Senator Muskie at all and it was a scoop in the radical right journal, I would certainly feel, once I had verified it, that it was part of my responsibility to pass it along. But in fact that kind of thing simply doesn't happen routinely.

Well, do you act, either in National Review or in

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your personal columns, in any sense as a conveyor belt or instrument for the transmission to the general public of radical right malice and rumor?

A No. It is preposterous. My columns are for the most part my analyses of public events, My analyses of public events are hardly inspired by the radical right journal, which for the most part, I have made plain on occasion after occasion, have nothing to say.

O Will you describe in general terms your relationship to -- first, I'm sorry. Let me withdraw that.

How would you define the phrase "radical right" as it is used in contemporary American controversy?

A It is used in many senses. It is used in the speech and in the writings of Dr. Littell pretty much indiscriminately with the word "fascist."

MR. BLASBAND: Your Honor, I object to this.

THE COURT: Yes. I'll sustain that objection.

A You asked me how it is used. Do you want me to say how it is used but not to give illustrations? Is that it?

Q I suppose he wants you just to talk in general terms.

MR. BLASBAND: Your Honor, I object to the question.

MR. MAHONEY: It is a little late for that.

THE WITNESS: Did you sustain the objection to the

question or the answer?

THE COURT: The thing is, I think Mr. Blasband rose to your answer about how Dr. Littell uses it in many senses.

MR. BLASBAND: And I object to the question, your llonor.

THE COURT: I'll certainly allow the question, but I think that it would be more helpful to just have a general description rather than trying to generally characterize how Dr. Littell uses it. If we get into how Dr. Littell uses it, we can refer to specific uses and be more specific than that.

MR. BLASBAND: I do think, if I may, that we are setting into the area where the witness is being called upon as an expert.

THE COURT: Just a moment. Overruled. I'll permit

'MR. MAHONEY: If I can just respond briefly to

THE COURT: There is no need to. Just go ahead with your question.

BY 'IR. MAHONEY:

of Mr. Buckley, would you describe the phrase "radical right" as you know it in contemporary American controversy?

Describe and define.

A The word radical right is mostly used in a

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pejorative context in an attempt to distinguish that part of the right which is uninhibited by any sense of decency, any sense of restraint, any requirement to acknowledge distinctions. It is used most generally in that sense.

Now, having said that, there is another sense in which it is used to describe reforms or proposals which are radical in nature. Just as one might have said, for instance, and did, about Paul Godman, that he was a radical left writer in the sense that he proposed a social innovation that went beyond, let us say, that what was proposed in the Democratic Party platform the preceding year, so is there a counterpart of that on the right.

Max Eastman, for instance, referred to himself as a radical conservative.

I have referred to myself as a radical in a carefully framed sense in which I sought to distinguish my conservatism from that conservatism which is merely a defense of the status quo. By that token, as you know, Stalin has been referred to as a "conservative"

So I added that distinction while stressing that
the term "radical right" as generally used is a term of
opprobrium, seeking to characterize that part of the
"right" which specializes in the nonmaking of distinctions in
passionate and thoughtless and abusive and often fascistic

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proposals.

THE COURT: 'I don't understand what you say about the other phase of the radical right.

THE WITNESS: Well, for instance, I, m self, published recently a book called "Four Reforms." There are reviewers who find in it "radical proposals": for instance, my proposal to have proportionality in tax or to revise the current understanding of the Fifth Amendment. To say this is a radical proposal from the right might very well appear in a very thoughtful review in the New York Times. It would not be intended to say this is the kind of thing that comes out of Belmont, Massachusetts. That is the neadquarters of the John Birch Society. Radical in that sense is thought of as nonconventional, extra-conventional.

THE COURT: Have you ever heard the term "radical right" used as such for that kind of thinking or that kind of a person, a person who is espousing radical reforms of a conservative nature?

THE WITNESS: Have I ever heard that?

THE COURT: Right.

THE WITNESS: Oh, sure.

THE COURT: I mean, you've heard the term "radical right" applied to that kind of thinking?

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THE WITNESS: Yes.

THE COURT: Okay, All right.

THE WITNESS: Milton Friedman is very often referred to as having come up with radical proposals.

BY MR. MAHONEY:

Q - Would the phrase that is most commonly used be to describe him as a radical rightist or his proposals as a radical proposal?

Λ The latter.

That's what I wanted to get at. The term "radical right" as a term is used. Have you ever heard Million Friedman referred to as a radical rightist or comeone in the "radical right, just taking that term as such?

A It would depend very much on the context. For instance, if it was an economic seminar, he might be referred to as a radical rightist as a result of his monetary reforms.

THE COURT: Okay.

But not in a polemical situation. He would never be confused with the John Birch Society, for instance.

Well, in the context of a discussion of extremism, in which of these senses would the phrase "radical right" be used?

> MR. BLASBAND: I object to the question, your Honor. THE COURT: Overruled.

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A In standard discussions of extremism, radical right is always used in an opprobrious way, not in the spirit of attempting to taxonomize a person's reforms or proposals.

It is only a request. Mr. Buckley used two words. I didn't understand either of them. I'll ask you, your Honor, if you could ask Mr. Buckley if he could define some of the terms.

THE COURT: Could you repeat the words?

MR. BLASBAND: Could you give us the definition o

THE WITHESS: Opprobrium?

TP. BLASBAND: Yes.

THE WITNESS: I am not good at cynicisms. But a term of opprobrium is a term of disapproval.

MR. BLASBAND: Disapproval. Now there was anothe word.

MR. MAHONEY: Taxonomize.

MR. LLASBAND: Yes.

specifically as you possibly can. For instance, human being is a Homo sapien. Homo is the genus. Sapien is the specie. That is the taxonomic table. So that if you make a proposa there is generally an effort to taxonomize it and decide where does it belong in terms of an effort to understand it

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providence, its associations and so on.

MR. BLASBAND: Now if I could have the last answer read back, your Honor, I will be able to understand it.

THE WITNESS: By the way, I don't believe you don't know what opprobrium is.

MR. BLASBAND: I do now.

(Answer read.)

BY MR. MAHONEY:

Mr. Buckley, the phrase "radical right, malice and rumor," and here I am quoting from page 51 of the book, in that context in which of the two sentences would the phrase be used?

In the pejorative sense.

And at page 154 that has already been read into the record from Dr. Littell's deposition, where it is said I'r. Buckley has been not a radical rightist and not a fascist himself but heavily in their magnetic orbit, in what sense would the phrase "radical rightist" be used in that passage?

"R. BLASBAND: Objection.

THE COURT: Sustained. That wasn't published. I'll sustain the objection.

- Mr. Buckley, it is stated at page 51 --0
- May I have my copy? You took it. ٨
- Bid I take your copy of the book? I'm sorry. ()

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Mr. Buckley, up to the middle of page 51 it is stated that you are a perennial political candidate. Have you ever run for public office?

- A I have.
- Q And how often?
- A Once.
- O And when and for what office?
- A Mayor of New York, 1965.

Pulled together, and I've just gotten into the courtroom, a series of items which is next in the passage through this. It is stated that Mr. Buckley never admits a mistake or apologizes to the victim. So we have a number of apologies from National Review.

I think it would be more orderly to go into that after lunch, after I've had an opportunity to go over it with Mr. Buckley.

Q Going on to the next sentence, Mr. Buckley, it is stated "Like Westbrook Pegler, who lied day after day in his column about Ouentin Reynolds and goaded him into a lawsuit, Buckley could be taken to court by any one of several people who had enough money to hire competent legal counsel and nothing else to do."

Mr. Buckley, is there anybody about whom you have

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lied day after day in your columns?

A There is nobody about whom I have lied ever, not to mention day after day, at least not intentionally.

- O And is there anybody about whom or is there any person against whom you have ever waged what might be described as a campaign in your columns?
 - A Oh, surc.
 - Q At a personal level now, not an intellectual level.
 - A Well, you would have to --

THE COURT: What do you mean?

- A (Continuing) Yes. Distinguish.
- O It would be one thing to disagree with the ideas of somebody. It would be another thing to get into the sort of thing that Pegler did about Reynolds, for example.

THE COURT: Is there anybody you waged a campaign against?

THE WITNESS: Sure. Lots of people.

- Q Of what nature would that sort of thing be?
- A It depends on the circumstances. We certainly wared a campaign against George McGovern when he ran for President of the United States.

Are you asking have I waged a campaign against somebody who is not a public figure? Is that the question?

0 Well, all right. I hadn't. But I will ask that.

MR. MAHONEY: But --

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MR. BLASBAND: Excuse me -- during the course of the interrogation. I am sorry to raise my voice, your Honor. But if Mr. Williams has a role in this case, he should announce it. If he doesn't have a role in it, I would suggest that he sit back there.

MR. MAHONEY: He was sitting at the counsel table but moved over there because the clerk wanted me to sit there because it would be easier to pick up my comments. He is serving as associate counsel in the case. And let the record show he spoke to me and not to Mr. Buckley.

THE COURT: Mr. Williams, I think on things like the date of Hitler's invasion of Russia and that sort of thing you have whispered, or whatever, comments to the witness.

Now, I think, even on things like that, I certainly am happy to have you up at the counsel table or sitting wherever you like to sit. But I think that I would not even on any subject convey any messages of any kind to the witness, please.

PR. WILLIAMS: Your Honor is correct. I won't say anything any more. I happen to be fairly, or quite, familiar with the case of Pauling against National Review. I defended the defendants in that case, and Mr. Buckley made a statement that was not entirely accurate and that prompted me to --

1	jglm Buckley-direct 94
2	MR. BLASBAND: Again, your Hynor
3	MR. WILLIAMS: I won't say another word.
4	THE COURT: I think that's better. We'll let the
5	subject drop. Thank you.
6	BY MR. MAHONEY:
7	0 Mr. Buckley, just to conclude that, did Mr. Pauling
8	bring suit against you?
9	A Yes, he did.
10	() and what was the outcome of that suit?
11	A It was dismissed at the end of the plaintiff's case
12	o Has anyone ever waged a successful suit against "or
13	for libel?
14	A Nobody has ever sued me for libel except him.
15	Oh, yes. Gore Vidal's suit. His was dismissed.
16	THE COURT: Let's see. You have had two libel
17	suits, the Pauling suit and the Vidal suit, right?
18	THE WITNESS: Yes. And they lost both.
19	O The Vidal suit, was that not a counterclaim against
20	your suit?
21	A Yes. I won.
22	O And do you remember how his counterclaim was dis-
23	posed of?

A Do I remember how --

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o Procedurally, what happened?

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AFTERNOON SESSION

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2:20 p.m.

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(In open court.)

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MR. WILLIAMS: If your Honor please, in view of the fact that Mr. Blasband expressed the view that my presence

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was ambiguous, with the consent of the counsel, there might

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be ambiguity and whatever I said to Mr. Buckley I want to

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explain that. I will only take a second.

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As your Honor knows, our firm were the original

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counsel in the case. I was personal legal counsel to Mr.

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Buckley for many years in the course of the representation

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of 'Ir. Buckley I advised him with respect to libel and had

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many libel actions both form him in his capacity as plaintiff

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and also outstandlingly as a defendant, the outstanding case

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being Pauling against National Review.

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We originally represented him in this case. However, not with particular relationship to this case but with rela-

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tionship to my practice generally I have in the last couple

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of years come to regard myself as the age and ability to try

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cases although I still argue motions and appeal. I therefore

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withdrew from this case and Mr. Mahoney was substituted as

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counsel.

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Mr. Mahoney and his associates have been in charge of all the pretrial proceedings since that substitution and

I have no participation in them and in fact I have not read them, and although I was supplied with a copy of the trial brief I had no participation in writing.

In fact, I had not indeed expected to come to the trial, but on Friday Messrs. Mahonev and Buckley asked me in the light of my experience and my original participation in this case if I would attend the trial, I might be able to contribute something. So I do not accordingly here.

Originally I sat in the seat where Mr. Mahoney is now. But the clerk wanted Mr. Mahoney to have that seat and in view of the fact that with the increasing age to which I have already referred, my hearing has become somewhat impaired. I sat in the jury box so I could hear the witness because I was afraid if I sat over there, I might not be able to hear him.

Sitting over here I did hear what he said and I made two -- I shouldn't have done so, but let me tell you. I want to say what I did. Mr. Buckley said that the Hitler invasion, Germany's invasion of Russia had been on June 19, 1941. I reacted thoughtlessly, June 22nd, the exact date is June 22nd not June 19th. According to my recollection, that is.

Without any expectation on my part as Mr. Buckley began talking about this editorial are you being sude by

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Linus Pauling which was published by National Review in the latter part of 1962, and I muttered letter because the editorial had been really sparked, promoted by letter, written by Professor Pauling's attorney to National Review, so I muttered that word.

I agree that those were improprieties.

indicated, I am delighted to have you in court and I think we all are and I think probably Mr. Blasband couldn't hear as well as I could, so I don't blame Mr. Blasband for being concerned. But I think it's all completely cleared up now and you are free to sit anywhere in the courtroom where you can hear to your satisfaction and I think that ends that.

Thank you very much.

All right, Mr. Mahoney.

MR. MAHONEY: Your Honor, I have provided Mr.
Blasband with copies of a number of documents that I have
alread supplied the court clerk with those. I am sorry
that these were not submitted in a list Friday. It just
occurred to us over the weekend that in the light of a
conference Saturday between Mr. Buckley and Mr. Williams
and me in the light of the charge that Mr. Buckley never
admits a mistake or apologizes to the victims that we would
survey National Review for the period 1966 through 1969 for

I ask if you can identify Exhibit 44-A as a letter

A I can.

THE COUPT: The date, please, again?

April 5, 1966. 1)

٨ Yes, sir.

MR. MAHONEY: I offer 44-A in evidence.

MR. BLASBAND: Mr. Mahoney, is this intended to be

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MR. MAHONEY: Apology or printing of a letter. In most cases it's an apology. This one is a printing -- they are printing a letter that calls attention -- 44-A prints a letter that calls attention to what is deemed to be an inaccuracy in National Review. Most of them are authored of apology by National Review, but there is not in 44-A. 1

an example of an apology by National Review?

submit it for whatever it's worth.

MR. BLASBAND: I will have an objection, a standing objection to all of these. I certainly object to this one. It's not an apology at all. This is something written by an aide to Mr. Nixon.

THE COURT: So we don't take time at this point to have the clerk have to stamp these, let's have the lawyer mark it Plaintiff's Exhibit 44-A and we can get the official stamp put on later. I will mark this one which I have in my hand.

MR. MAHONEY: He has an extra set that he can mark as we go through them.

THE COURT: The official set you have?

MP. MAHONEY: He has a set that exactly duplicates this set.

THE COURT: You mark those and make sure you are square with the clerk as to what the mark is.

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MR. MAHONEY: Yes, sir.

DR. LITTELL: Might I have a set, your MAnor?

MR. MAHONEY: I will have to ask Mr. Blasband and you to share a set. I have three xeroxes and the clerk has one and I have one.

DR. LITTELL: He is not appearing for me.

MR. MAHONEY: I know he is not.

I will be giving these to you in chronological. order.

THE COURT: I don't get the relevance of 44-A.

MR. MAHONEY: In almost every other instance, your Honor, there is an actual affirmation of an apology on National Review.

> THE COURT: I will sustain the objection to 44-A. MR. MAHONEY: All right.

Mr. Buckley, I show you two letters labeled "Correction" in the National Review, June 25, 1966, one signed by Thomas Saz and one signed by Jonathan Dexter Glidden. I ask you whether that appeared in that article.

They did.

MR. MAHONEY: I offer 44-B in evidence, your Honor.

THE COURT: Any objection?

MR. BLASBAND: I am reading it now, your Honor. Maybe if I can read it with Dr. Littell, it would be better.

THE COURT: Sure.

Is there something else you can cover with Mr.
Buckley and we will take a recess and let Mr. Blasband and
Dr. Littell and myself read these while we have a recess?
MR. MAHONEY: Certainly.

THE COURT: Then we don't have to wait. I think this wastes a lot of time.

MR. BLASBAND: We would be willing to stipulate
that each of these items appeared in National Review so
Mr. Buckley wouldn't have to identify them. We can put them
in evidence at some later point if your Honor so rules.

THE COURT: Why don't you go on to something else.

MR. MAHONEY: Fine.

I want now to read a brief passage from Dr.

Littell's deposition, pages 110 to 111, December 21, 1973.

At this point they are discussing another document being offered in evidence in the deposition following transpires:

"Question: Is there any reference in this pamphlet to William Buckley by National Review or any of his columns or writing?

"Answer: Not in this pamphlet, no. The connection is another one."

THE COURT: I didn't get that.

MR. MAHONEY: "The connection is another one."

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THE COURT: Start over again.

MR. MAHONEY: Start over the answer?

THE COURT: What you started reading.

MR. MAHONEY: "Question: Is there any reference in this pamphlet" -- this is a document being offered for identification at the deposition -- "to William Buckley by Mational Review or any of his columns or writings?

"Answer: Not in this pamphlet, no. The connection is another one. In the attacks which 'Ir. Buckley made on me he leaned heavily on the Church League and this has to do with the credibility of the Church League.

"Question: The attacks Mr. Buckley made on you were represented in what form?

"Answer: Well --

"Mr. Blasband: Exhibit 15 is, I think, what you are looking for.

"Answer: (Continuing) Yes. I am looking at Exhibit 15 which is my memorandum of the sequence here. January 1967 the whole issue of Edgar Bundy's news and views was devoted to an attack on me following the information which was published in the John Birch Society Bulletin."

"r. Buckley, in your exchanges with and comments upon Dr. Littell, did you draw upon any information provided by the Church League of America or anything written by the

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Church League of America about Dr. Littell?

Do you mean in the ones that we have discussed this morning?

Yes.

No. sir.

Did you draw upon or follow the lead of the John Birch Society or any representative of the John Birch Society in any of what we have talked about this morning?

A No.

O Mr. Buckley, looking to the passages, various passages on page 51 of Dr. Littell's book, specifically the passages that say that your book "God and Man at Yale" had been exposed and condemned for falsely twisting facts and for sheer malice, the further passage that states that National Review and your syndicated news column frequently print news and items and interpretations picked up from the openly fascist journals, the further statement that National Review and your syndicated column have been important and useful agencies for radical right attacks on honest liberals and conservatives, the further statement that you have been caught out for misquotations, with quotation marks, and for repeating radical right malice and rumor and that you never admit a mistake or apologize to the victims, the further statement that you are like Westbrook Pegler, who lied day

brought into court.

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DR. LITTELL: Objection, it does not say like
Westbrook Pegler. It says like Westbrook Pegler could be

after day about Quentin Reynolds and goaded him into a

MR. MAHONEY: It speaks for itself.

Q Mr. Buckley, if the general public notion of you as a spokesman and controversialist were to follow the comments by Dr. Littell which I have just cited to you, would that development have an impact on your career and livelihood?

MR. BLASBAND: Objection.

THE COURT: What ground?

MR. BLASBAND: Your Honor, first of all, he is asking the witness a hypothetical. Secondly, he is assuming certain facts which they have not established at all.

Thirdly, the plaintiffs have not pleaded. It's been stipulated they do not intend to prove special damages!

THE COURT: They are pleading libel per se.

Shouldn't a man who claims he has been libeled be permitted to testify as to what he believes would be the effect on him of the alleged libelous publication? I would think he can testify to that.

MR. BLASBAND: I think, your Honor, he has to show what the effect was.

MR. MAHONEY: That is not the law.

'IR. BLASBAND: They haven't done that.

THE COURT: I will allow the question.

A I said it would terminate my career. If these were accepted.

Why would it terminate your career?

A I have got 375 newspapers that pay me to write three times a week. I can't imagine that they would continue to do so if they were convinced that I was serving in the capacity described by the author and that I followed practice described by the author, as much could be said of people who sponsor my program on television. As much could be said of the people who advertise in my journal and who subscribe to my journal, as much could be said of the college faculties that invite me to join their faculties or to lecture to their audiences. I cannot imagine anybody about whom that much is true who is employable in any decent occupation.

MR. BLASBAND: Your Honor, given the witness' answer, I move to strike the testimony. I think it's become abundantly clear that what the witness is speculating about is in essence special damages and he hasn't alleged any of that. He said this could. But let him prove that it did. That is what a damage is. Your Honor, he can't because nothing like that happened.

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MR. MAHONEY: That is simply not required in a libel per se case.

THE COURT: The definition of libel per se as given in this McKennon against Smith case which is one of the cases cited in the briefs. It's defined as being libel per se if the publication tends to, and I emphasize tends to, expose a person to hate or contempt or aversion.

In view of that I will deny the motion to strike and I will admit the testimony.

0 Mr. Buckley, can you identify any specifically traceable economic loss or detriment which you have suffered as a result of the publication of "Wild Tongues"?

No.

Q Mr. Buckley, can you describe your reaction when you first saw those passages of the book "Wild Tongues" which referred to you, to wit, the passages on pages 50 to 52.

MR. BLASBAND: Objection.

MR. MAHOMEY: He is entitled to show, your Honor, in terms under the category of just mental reaction and mental suffering what his reaction to it was.

THE COURT: You can recover for mental suffering?

MR. MAIONEY: Yes, your Honor.

THE COURT: Is that right?

MR. BLASBAND: Your Honor, I don't know if he can.

I haven't seen any case law on it. I don't know that the plaintiffs covered it in their brief. I frankly can't make that judgment, your Honor, as to whether they can --

THE COURT: It's covered in your brief, isn't it,

MR. MAHONEY: I believe it is.

THE COURT: Where is that?

MR. MAHONEY: Point 4 in our brief, your Honor.

THE COURT: What is the case? Page 14, Sword against Parade Publications?

MR. MAHONEY: That is the one.

THE COURT: I am afraid I haven't read that. Have you read it, Mr. Blasband?

MR. BLASBAND: No, your Honor, but I believe that the type of mental suffering that he is talking about is that engendered by the community as a result of reading the alleged libel.

MR. MAHONEY: We have three citations there, your Honor.

THE COURT: What are the specifics of the case? It is a Blasband right, that the mental suffering element is that which accrues from being defamed and having the public look down on a person, or is it the mental suffering you get when you read an insult about yourself?

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MR. MAHONEY: Your Honor, I honestly don't recall, but I believe it is the latter. At least I believe the latter is included as an element But if we put the testimony in and we are wrong in our recollection of the three authorities, then the testimony won't be of any value.

THE COURT: I will admit the testimony subject to a motion to strike after we have looked a the cases.

Q Mr. Buckley, if we can have an answer to that question, the reaction when you read the passage concerning you at pages 50 to 52.

A When I read it I knew that I was reading from something that would go out into general distribution and, therefore, there was an instant inference that from either of the two disputed interpretations I would in fact suffer.

It was not the purpose of MacMillan to produce ? single copy of a book for the sake of acting sadistically towards me. It was their purpose to distribute that book, and under the circumstances I knew that X number of people throughout the community of America would in fact receive this impression of me.

I knew once more that it was going out under the imprimatur not of a wild ad hoc publishing house, but an extremely distinguished one with a reputation that gave a special carriage to its publications and I knew, moreover,

that the author had been a college president and a professor of Theology and that under the circumstances I would be very severely damaged by people who read that book.

And I received it with the most intense conceivable indignation, all the more so inasmuch as I deduced instantly that the charges leveled against me could not have been made except with reckless disregard of the known fact about me as written to me from Dr. Littell himself, who only a few months earlier had said that he distinguished between me and these radical rightist organizations and who said we had a mutual friend, Will Herber, who had been the religious editor of National Review and had been for eight or nine years.

Under the circumstances a combination of all of these factors outraged me in a sense that I have not been similarly outraged three or four times in the course of my public career.

MR. BLASBAND: Your Honor, I move to strike the witness' testimony. He has been arguing. He has not responded to the question. He has given statements which, in effect, are his arguments of the case rather than a statement, even if it were permissible, of mental suffering.

what he says it reflects, that is his state of mind at the time he read the publication. I am not taking it as having

any weight on whether or not there was reckless disregard and so forth. So that is the way it's taken. If the cases don't support the theory of damages, it will be disregarded completely.

Go ahead. You mentioned Will Herber.

THE WITNESS: Yes, sir.

THE COURT: You are referring to this letter of February 14th of Dr. Littell to you which had a blind copy to Will Herber? You hadn't seen --

THE WITNESS: I am referring to his earlier letter in which he said -- he made some reference to the fact that he is a friend of Will Herber and in fact he went so far as to say that he agrees with Will Herber on practically all matters.

THE COURT: That is the handwritten note?

MR. MAHONEY: That is the handwritten note, your Honor, yes. The other reference is to the January 14, 1968 letter. That is 15-A where he is saying I have considered you and your journal a considerable cut above them, speaking of extremist of left or right. The reference of Will Herber is in the handwritten note from Dr. Littell to Mr. Buckley.

THE COURT: Who was Will Herber?

THE WITNESS: Will Herber is a professor at Drew University, a very prominent sociologist, theologian, author

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of the book "Catholic, Protestant and Jew," and I suppose it is moderately safe to say among the ten or fifteen most respected American citizens in the academy and in the field of social philosophy.

THE COURT: What again was your concern about Will Herber? I didn't get that.

THE WITNESS: My concern was that what I considere to be the reckless -- I am trying to avoid the anti-New York Times which is self-formulation because its suspect. My concern was -- rather my indignation resulted substantially from my knowledge that to have traversed from his position as expressed in January of 1968 to his position as expressed in this back required him, among other things, to ignore the readily available testimony about me and my work and my character that could easily have been gotten at the other end of a telephone call to Will Herber whom he had already professed to have a great admiration for and who continued on the masthead of National Review and would hardly have done so if in fact he served the pruposes that he alleges.

MP. MAHONEY: I have no further questions at this time, your Honor.

THE COURT: Mr. Blasband.

MR. BLASBAND: Your Honor, we have reached a stipulation of agreed facts. Should they be read into the

record?

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THE COURT: No.

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CROSS-EXAMINATION

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BY MR. BLASBAND:

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Mr. Buckley, when did you found National Review?

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A 1955.

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O In 1968 were you the founder, owner and editor and

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chief of the National Review?

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Yes, sir. A

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O At that time did it have a circulation of an excess

of 100,000 copies per issue?

13

A Yes, sir.

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O You began writing your newspaper column on the

15

right in 1964; is that correct?

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A No, '62.

17

0 1962.

and 1969?

18

In the stipulation of facts we say that since 1964

19

A That is correct.

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O In how many newspapers was it syndicated in 1968

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THE COURT: Ins't that in the stipulation?

that's appeared three times a week; is that correct?

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MR. BLASBAND: No.

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THE COURT: It says on the right since 1964 as

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THE COURT: About 75 T.V. stations back in '69,

right?

THE WITNESS: Yes, sir.

THE COURT: Okay.

O Mr. Buckley, would it be a fair statement to say that your political views and your views on other subjects of current interest are controversial?

A Sure, yes. You mean controversial as defined as that there are people who don't share those views?

Q That's right.

A Yes.

O There is a great deal of debate over some of your political views?

A Oh, sure.

O Is it also true that a number of your political views have been subjected to intense criticism in the press, magazines, television?

A Correct.

Q Has it also been said of you that you are -- aside from whatever you calim Dr. Littell said of you -- that you are either a member of the radical right in this country or that you aid and abet the radical right in this country?

A I think you would have to be more specific. I don't monitor all conversations about me.

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1	jqlm Buckley-cross 116
2	O Have you ever heard that said of you, Mr. Buckley
3	A Have I ever heard it said about me that I am a
4	member of the radical right?
5	Q That's right.
6	A Yes.
7	Q Or that you aid and abet the radical right.
8	A Yes, I have.
9	• Q Is that an uncommon occurrence?
10	A It's hard to answer that question without qualify
11	ing it. It's said of course about Richard Nixon, too.
12	Whether it's said more often about me than him, one really
13	doesn't know. It really depends on the forum you are talki
14	about.
15	For instance, it would be said probably every day
16	in the Daily Worker, but I didn't know whether you wanted m
17	to count in those with, say, the number of times it would
18	have been said in the New York Times.
19	Q Let's talk about the number of times you have see
20	it in papers, newspapers that you would not consider
21	A Responsible newspapers?
22	n Yes
23	A I haven't seen it in responsible newspapers.
24	Q But you have seen it in the New York Times?
25	A I don't remember seeing it in the New York Times.

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I remember the New York Times has made unfriendly references to me, but I don't remember one of exactly that character.

Though it wouldn't surprise me. As you know, the New York Times allows considerable latitude to, for instance, its book reviews.

O Yes, sir.

Now, is one of the reasons that you read your books to influence public opinions?

A Yes.

O What did you know about Dr. Littell before you had your first series of correspondence with him, referring to the correspondence that's been put in evidence today.

A Nothing.

() You had never heard of him before?

A I don't remember hearing about him before which doesn't mean that my eyes probably didn't run over his name in this or that connection. I had no particular knowledge of him.

Q Let's refer to Plaintiff's Exhibit 14.

THE COURT: I think I have that. I have them here and I will give them back to you.

Q Let me show you Exhibit 14, Mr. Buckley. It's the transcript from National Review.

A Yes.

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THE COURT: That's the August 15, 1967 issue?

MR. BLASBAND: Right. Your Honor, I must say that I am sure this was inadvertent, but there is material that is missing from this Exhibit 14 that appeared in the original and perhaps we can get a substitute.

Mr. Mahoney, you remember the handwriting that was on the top.

MR. MAHONEY: That's what he testified about this morning.

THE WITNESS: Here it is right here.

We should have a substitute for this Exhibit 14 is what I am suggesting.

MR. MANIONEY: Here is a better copy. Why don't we substitute this for Exhibit 14.

THE COURT: Call it 14-A. 14-A is received.

(Plaintiff's Exhibit 14-A received
in evidence.)

Q Looking at Exhibit 14-A, did you read this transcript about Dr. Littell in Exhibit 14-A before it was published?

A No.

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SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

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Q Do you have any association at all with this issue of the National Review, that 14-A appears in?

A No, I testified that I am pever even physically present when the National Review Bulletin is assembled.

THE COURT: Could you show me 14-A so I am sure I have the right one.

MR. BLASBAND: Yes, your Honor.

Q Are you saying you have no control over the editorial content of the National Review Newsletter?

A I have control but no direction.

Q What kind of control do you have?

A I own it.

O Are you also president of the corporation that publishes it?

A Yes.

Q Who is the editor in chief of the National Review Newsletter?

A The function editor is James Burnham.

O Who is the named editor in chief?

A I am the named editor of all the National Review publications.

O It's your testimony that you didn't see this issue of the National Review before it went out on press?

A That's quite correct, yes.

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FOLEY SQUARE, NEW YORK, N.Y. 291 10:00

O When did it come to your attention?

A When Dr. -- well, I read National Review Bulletin every weekend after its publication. But it didn't come to my special attention until after Dr. Littell wrote to protest it sometime later.

Q Is it also your testimony that you did not know anything about Dr. Littell before Exhibit 14-A was published

A Not that I could recall.

MR. BLASBAND: Your Honor, may I have these other exhibits that have been marked, it would be much easier for me.

Looking at Exhibit 14-A again, Mr. Buckley, do you see the handwriting at the top of the second page it says "Underlined portion should not be in quotes. It was the News' paraphrase."

A The News' paraphrase.

O Whose handwriting is that.

A Agatha Dowd.

MR. MAHONEY: Your Honor, I have an objection at this point simply in the interest of consistency that this is exactly the testimony that Mr. Blasband successfully kep out when I was examining Mr. Buckley on direct. If he can explain to the Court why he now finds it admissible or if the Court feels it's admissible, that's fine. I tried to elicit

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THE COURT: To what question?

this on direct but the objection was sustained.

MR. MAHONEY: I was trying to talk to Mr. Buckley about the question of whether there was anything quoted in this August '67 edition of National Review. If there was anything quoted in quotation marks that did not technically belong there. Mr. Blasband objected and your Honor sustained the objection.

THE COURT: I sustained the objection because I thought the document spoke for itself, and I did not have before me or maybe I had before me but I couldn't see any handwritten thing at the top. There ray be an issue now and if there is any questioning you want to do in it, you certainly can.

MR. MAHONEY: Fine, your Honor.

THE COURT: Okay.

What is the answer, who wrote the handwritten material at the top, Mr. Buckley?

THE WITNESS: Agatha Smith Dowd, the research director of the flational Review.

Did she discuss -- did Miss Dowd discuss this matter with you?

No. When I got the protest from Dr. Littell I forwarded it to my sister and -- no, I forwarded it to

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Mrs. Dowd. She keeps track of who it is who wrote the individual paragraphs.

She then went to my sister and asked on what had she relied when she wrote this paragraph. My sister gave her the clip from the news which turns out to be the Rocky Mountain News and Mrs. Dowd underlined those passages in that paragraph that ought not to have been in quotes. Attached to it a copy of the Rocky Mountain News report which was the basis of the confusion.

O Is it common for the National Review to rely on a newspaper report?

A Very common. We do it all the time.

You don't consider it necessary then to research even further into a news, item?

A Well, it would depend on the character of it. If it was so extraordianary as to be inherently implausible, then we would. But one follows a newspaper office's certain kinds of rules.

If you are discussing something that was reported a week or ten days before and did not cause the kind of sensation that brought instantly a rectification of the original error, you proceed with a certain presumption that it has not been challenged.

! It's quite correct, is it not, that Exhibit B is

1	jqlm Buckley-cross 123
2	the letter from Dr. Littell that put you on that there had
3	been some disquotings; is that correct?
4	A Yes, sir.
5	MR. MAHONEY: Can you give us a precise
6	Defendants' Exhibit B?
7	MR. BLASBAND: Yes.
8	THE COURT: What is your question, Mr. Blasband?
9	MR. BLASBAND: I think there was an answer.
10	Exhibit B is the letter that put Mr. Buckly on notice that
11	certain misquotations had been made in this article which is -
12	MR. MAHONEY: I object. Mr. Blasband is mis-
13	characterizing Defendan s' Exhibit B.
14	MR. BLASBAND: I asked a question and got an ansver.
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16	THE COURT: What is the next question?
17	MR. BLASBAND: I haven't asked it yet, your Honor.
	THE COURT: Let's ask it.
18	MR. MAHONEY: Mr. Buckley had not looked at
19	Defendants' Exhibit B. The question for the record mis-
20	characterizes Defendants' Exhibit B.
21	THE COURT: I will read the letter. Let's go ahead.
22	P. BLASBAID: Excuse me, your Honor, these exhibits
23	are so far out of order chronologically that it's hard to put
24	them together.

THE COURT: Let's take a recess and please let's

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get the exhibits. let's get a set of exhibits in order for you to use, Mr. Blasband, and a set for Mr. Buckley to use, and I will get a set for myself to use, and if you can go over those apologies, it's about time for a recess and I think you can do that very quickly.

IR. BLASBAND: Fine.

(Recess.)

THE COURT: Mr. Blasband.

BY MR. BLASBAND:

Q Looking at Exhibit 14 which is the first transcrip about Dr. Littell in the National Review, you will agree wit me, will you not, that it does create the impression that Dr. Littell actually gave a speech?

A It certainly does.

O At the National Education Association?

A Correct.

O Isn't it also correct, 'Ir. Buckley, that the artic intends to convey the impression that Dr. Littell was attack ing only the members of the right, extremists of the right; is that correct?

A No.

Q Look, if you will, at the statement extremist and then the brackets of the right close brackets should be thrown out of whatever groups they are in, churches, the right; isn't that correct?

itself, your Honor. I object.

can tell what it intends.

That's right. The question I have for you, isn't

MR. MAHONEY: I believe the article speaks for

MR. BLASBAND: I think the publisher of the article

THE COURT: I think he can be asked if he knows.

He said he didn't write it and he said he didn't review it.

But he owns the publication, so if he knows what the inten-

tion was, he can say and if he doesn't, he can say he doesn't

O All right, Mr. Buckley, do you know what the inten-

synapopues, et cetera. Your publication put in the words of

it the intentment of this article that you were saying that

Dr. Littell was only stating that extremists of the right

should be thrown out of these organizations?

A Yes. Based on the Rocky Mountain report.

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tion of that article was?

A The intention of that article was to convey the report on Dr. Littell's speech as it reached us by the Roc. Mountain News. The headline of which was rightists' rights, wrong cleric says. So the cleric is not quoted in that article as saying rightists and leftists wrong but just rightist.

SOUTHERN DISTRICT COURT REPORTERS US COURTHOUSE

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Q Is the interest from National Review's point of viewthat Dr. Littell appeared to be attacking the right?

A Do you mean would we have noticed a statement by someone like Dr. Littell saying that leftists ought to be kicked out of churches -- I think we would have, yes.

Q That wasn't my question. My question was: Wasn't it the appeal for National Review in that Dr. Littell seemed to be attacking the right?

MR. MAHONEY: I will object again. The appeal for National Poview, he is talking about the decision to publish.

THE COURT: I think maybe we just have to clarify

(Question read.)

MR. BLASBAND: That's the reason for the publication.

MR. MAHONEY: The point is Mr. Buckley didn't participate in the decision to publish.

THE COURT: This is if Mr. Buckley knows.

Do you understand the question?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: I understand the question. National Review notices attacks both on the left and on the right, and if Dr. Littell had said in my opinion left extremists ought

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bar associations and so on, we would have noticed it. Q I see. In other words, Mr. Buckley, if you had

to be kicked out of campuses and ought to be kicked out of

known that Dr. Littell was also stating that extremeists of the left should be thrown out of synagogues, et cetera, you certainly would have published that; is that correct?

A To say certainly asks for journalistic judgment having to do with piquancy. As you know, journalists tend to notice that which is unusual. That which is more unusual has a high chance of getting in than that which is more less unusual.

(Question read.)

MR. BLASBAND: I need an answer to the question and I don't think I got it.

Do you want an example?

THE COURT: There was a word in there.

THE WITNESS: P-i-q-u-a-n-c-v. In other words, if George McGovern said we have to get all the leftists out of the Democratic Party, that would have a higher chance of getting into National Peview than if George Wallace said it.

THE COURT: You asked him if he would certainly have published it if it had been an attack on the left. It's answered. He can't say that he would have published because he wasn't there. Maybe you can approach it a little

O Let me ask you this: If you had known that Dr.

differently.

Littell was attacking the left, the extremists of the left as well as the right, would you have so noted that in your report of it?

'MR. MAHONEY: I object again. He didn't write the report.

THE COURT: Sustained.

MR. BLASBAND: We can put it in the form of a hypothetical, your Honor. Mr. Buckley is the editor of this journal.

Q If you had published this article, Mr. Buckley, and you had known that Dr. Littell was also attacking the extremists of the left, would you have so noted that in your report?

MR. MAHONEY: Objection. He is asking for surmise.

any length you want, your Honor. I don't want to appear discursive, but I can't answer questions of this kind without letting you in on certain subtleties that govern our decision in National Review.

off from anything of your train of argument. I think this case involves subtleties. I don't want to deal with this is

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

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cutting you off. It seems to me if you ask a journalist if he would have published something at a certain point of time if he had noted something, I don't know that it particularly helps me.

Secondly, it seems to me it's almost an impossible question as phrased. Maybe you can out it again.

MP. BLASBAND: I will get at the point a little differently.

THE COUPT: Okay.

- After you received your note from Dr. Littell in which he complained of Exhibit 14-A von wrote him by Exhibit 16-A, this letter of January 8, 1967; is that correct?
- A That's correct. Am I supposed to find it?
- Q No. Dr. Littell writes you back by letter dated January 14, 1968 which is Exhibit 15-A.

A Right.

MR. MAHONEY: May I note, Mr. Blasband -- your Honor, rather, may I note there is confusion. We have agreed that that date is not January 1967 but '68.

MR. BLASBAND: That's correct.

- O With his letter Dr. Littell sends this report, that is his proposed speech; is that correct?
 - A Yes.
 - Q And he advises you that he actually didn't deliver

Excuse me, he didn't mean -- I could see nowhere i

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that paper, correct?

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Yes, he had already advised me of that.

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Q That's right.

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his letter a communication to the effect that he had revised

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his analysis.

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O Mr. Buckley, just answer my questions, please.

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A Yes

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O In his letter to you Dr. Littell in his second

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paragraph states as you can see by the copy, "The efforts of the radical right to create the impression that I was shield

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ing the communists is both false and malicious. As a matte

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of fact I have been severely criticized by various doctrina.

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champions of civil liberties and self-styled liberals just

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vigorously -- although not with false quotations -- as by t

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Birches and their fellow travelers -- the xerox of Gaskie's

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report which you enclose, and which I am now seeing for the

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first time, is not inaccurate in the selective quotations.

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It is false in its headline and first sentence, and obvious slanted to convey a false impression."

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You notice that Dr. Littell was telling you that

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attacks both the left and the right; isn't that correct, af

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A Yes.

seeing 15-A?

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O You will also notice that the Gaskie report was incorrect; isn't that correct?

A No, Mr. Blasband, it isn't.

o le says the xerox of the Gaskie report which you enclose and which I am now seeing for the first time is not inaccurate in the selected quotations, it is false in its headline and first sentence and obviously slanted to convey a false impression. You read that, didn't you, Mr. Buckley?

A Yes.

Q Fine.

A You mean all you are asking me is if I read this letter?

Q Following the letter from Dr. Littell of January 14, 1968 you wrote this article called "Who Are The Totalitarians?" Before writing your article "Who Are The Totalitarians," did you read the article or the proposed speech that Dr. Littell sent you, "The Threat of Extremism to Democracy," which is Exhibit 15-B?

A Yes, I testified to that already.

Q How soon after receiving the January 14, 1968

letter from Dr. Littell and the enclosure, his proposed speech, did you write this article which is called "Who Are The Totalitarians"?

A It would be an act of deduction, but if that was

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fascist underworld simply is abusive.

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To say, for instance, that Bundy is part of the

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THE COURT: Are you talking about the letter right

THE WITNESS: Yes.

1 see.

- But that's just your opinion, correct?
- What do you mean my opinion?
- That he was abusive, that Dr. Littell's letter is abusive.

A Is there an opposite to an opinion in something like this? Is my opinion as distinguished from my what?

Q That's just your opinion. You can answer yes or no.

A No, I can't. You are playing rhetorical games with me and I choose not to submit. Do you mean is there a Bureau of Labor of Standards or FDA on the basis of one can measure what is abusive?

THE COURT: What is the last question?

MR. BLASBAND: Mr. Buckley called Dr. Littell in his article "Who Are The Totalitarians" an abusive rhetorician, and I ask Mr. Buckley whether that was his opinion.

MR. MAHONEY: If I might object, I think at this point he is arguing with the witness.

THE COURT: Let's go to the next question.

You also referred to an organization called the Institute for American Democracies. You say that it's the

1	jalm Buckley-cross 134
2	succor to the National Council for Civic Responsibility.
3	Upon what do you base your information that the Institute
4	for American Democracies is the succor to the National
5	Council for Civic Responsibility?
6	A Upon what did 1?
7	Q Yes.
8	A Something I must have read at that time or shortly
9	before then.
10	O Do you know what it was? Can you remember?
11	A No, I know now that in 1968, after this exchange,
12	and not related to it, National Review reported on an analys
13	done by the Church League of America headed by Mr. Bundy in
14	which he traced the background of this institution and I
15	alleged apparently convincingly in our judgment that

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relationship.

But you didn't have the benefit of the Bundy article at this time in 1968?

A No, I presumably had something that preceded that.

Q You called the National Council for Civic Responsibility a phony outfit. Upon what do you base that statement or did you base that statement?

A I based it on a familiarity with its pronouncement over the years which convinced me that its principal mandate was to classify some right wing proposals, people and

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opinions, as being extremist. This was where its enthusiasm obviously was though it's true they were ritualistic condemnations of the far left.

- Q You don't state that, do you?
- A Don't state what?
- O That it also defames the far left.
- A I didn't say defamed, sir.
- Q That it criticized it. You didn't say it criticized the far left in your article.

A I don't say irrelevant things in my articles. If
I had thought it was irrelevant, I would have said it.

O You say that it was --

THE COURT: You said that you believed on the basis of the organization's pronouncements over the years that its principal mandate was to what?

THE WITNESS: Was to persecute is too technical a word -- to harass the right wing and to seek to illegitimize the right wing.

- Q You also stated, is it true, Mr. Buckley, that you know at the time that it also criticizes the radical left; is that correct?
- A Shall I repeat the way I put it? I said that it engaged in ritualistic criticisms of the far left.
 - O In other words, are you saying it did criticize --

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A We are talking about Arthur Larrison's outfit?

O That's right. It criticized the far left but you didn't believe it was sincere?

A No, I didn't. Arthur Larrison is a Republican. Obviously he doesn't like Trotsky. I am simply saving that the organization in question had as its primary motive not t fight Trotskyism but to fight the Goldwaterism.

Q You also say that the Larrison outfit was commissioned to defame Senator Goldwater; is that correct, or are you referring now to Dr. Littell's organization?

A I don't have in front of me history's organization but I wasn't aware Littell's organization existed in '64.

O We are now talking about an article that you wrote in 1968. You say Dr. Littell's organization is the succor t the National Council for Civic Responsibility, the phony outfit financed by the Pemocratic Party and commissioned to defame Senator Goldwater.

A Yes.

Your Honor, if you want me to go back and do the research on this, I will. My memory of it is that it was revealed that the money spent by that committee whose ostensible goal was to seek out extremism all over the world its deficit was in fact paid for by the Democratic Party in 1954 because it found it useful in its campaign against

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That you say was the predecessor to Dr. Littell's organization, the Institute for American Democracies; is that correct?

That was and is my standing.

0 Okav.

Let's go further on your report of Dr. Littell. In the third paragraph you say the question was asked most

provocatively by Dr. Franklin H. Littell last summer at the meeting of the National Education Association. You are referring I assume to the proposed speech of Dr. Littell, correct?

A Right.

Q You knew at the time that you wrote this article that actually Dr. Littell did not deliver that speech at that meeting; is that correct? Dr. Littell told you so.

A Did not personally deliver it. I did not know that it was not submitted or did not become a matter of common discussion. Obviously the Rocky Mountain Daily News person got it from somebody. For all I know it was distributed by the NAA.

Q But you didn't know that, you just assumed that; i that correct?

A Yes.

THE COURT: I think we are repeating, 'Ir. Blasband.
I think the point is made.

MR. BLASBAND: Very well.

Q Let's go on. On the second page of this exhibit, which is Exhibit A, we have already noted that you did misquote Dr. Littell both in his speech and in his letter by saying he will lump together Hargis, Bundy, McIntire, Welch and Gerald L. Kase Smith. Do you remember that testimony?

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THE COURT: We don't need to go through that.

THE WITNESS: No, I deny your statement of it. I did not misquote him by saying he would lump it together. I misquoted him by saying that he would lump it together in a single sentence. Did he lump them together.

- Q You also said that Dr. Littell said they composed the fascist underworld.
 - A That's right.
- Q But he didn't say all those, composed the fascist underworld, did he?
- A \sim He said that as regards the first thing and w rse about the other two.
 - () But you didn't say that Welch and Kase --
 - A Yes, he did.

MR. MAHONEY: He is arguing with the vitness again.

THE WITNESS: I will cite you the passage in which in reference to Welch and in reference to Smith he said at the very least that they composed a part of the fascist underworld.

- O I would like to see that.
- A It's right here. I am quoting now from Dr. Littell' speech. You want a reference to Welch, correct?
 - Q Yes.

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There he is bracketing Gus Hall and Robert Welch. Gus Hall is a communist agent in America. By bracketing Welch he at least makes him a nazi agent in America, so if anything I softened his reference to Welch by putting him merely as a member of the fascist underworld instead of the nazi.

- Where is Gerald L. K. Smith? 0
- You want that one?
- I note you put these people -- you refer to them all in quotes as "the fascist underworld." That quotation is wrong, isn't it?

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The phrase fascist underworld is Littell's.

Q That's right.

A What I did, and I explained this earlier, was substitute inadvertently Welch and Smith for McBirnie, but in the same documents I read references to Welch and Smith were made by Littell at least as individuals as to say that they were members of the fascist underworld.

Q But he didn't say they were members of the fascist underworld?

MR. MAHONEY: He is arguing with the witness.

THE COURT: I can read and if there are discrepancies between what Mr. Buckley put in his article and what Dr. Littell put in his letter and speech, we can line the text up and argue about it later.

THE WITNESS: Shall I answer your last question?

Q We will go on.

A You don't want the one about Smith?

Q No.

Now, you go on to say he will discharge any member of the John Birch Society and any member of Major Bundy's Church League of America. Both of those organizations are in a right wing of the political spectrum; isn't that correct?

A Right.

Wasn't it your intention to set forth examples of

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Dr. Littell's attack on the right wing by using those two organizations as examples?

A No. 'My intention was to show that the whole notion of excluding as falling outside tolerable -- outside tolerable limits of opinion runs into the kind of difficulty shown by Dr. Littell who makes these sloppy juxtapositions. That was the purpose.

Q Why didn't you use an example then from an organization on the left wing of the political spectrum?

A Because --

O You knew Dr. Littell was attacking the left, didn't you?

MP. MAHONEY: May be answer the first question before he asks the second.

A Because Dr. Littell in his speech used the following words "To be specific the liberty of Carl "CIntire and Hargis and Smoot and Gerald L. K. Smith and Edgar Bundy."

Where he was being specific was with reference to "right wing" figures which is why I and the Bocky Mountain Daily News considered that the thrust of his speech was against certain "right wingers."

? You did read the first paragraph of Dr. Littell's speech, didn't you, in which he says the threat which confronts us from the radical left and the radical right

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presents not a crisis of opinion but a crisis of law?

A I read beyond that where he said to be specific and confined himself to references to the radical and nazi right.

O Isn't the impression created by your article is that he is just attacking the right?

MR. MAHONEY: Objection.

THE COUPT: Sustained.

MP. BLASBAND: I do believe that we can get that kind of an admission from the witness. It seems to me it's fairly clear --

THE COURT: If it's fairly clear, I will be able to read it.

- O Then you said -- by the way, I don't know if this was covered, but was your article "Who Are The Totalitarians" actually published in the newspapers?
 - 1 Yes.
 - It went to all the syndicated papers? 0
 - Λ Yes.
- And on February 14, 1970 you received this letter 0 from Dr. Littell?
 - That's right. What is that number? 1
 - Plaintiff's Exhibit 17. 0

You wrote to Dr. Littell by Exhibit 18 and that was

SOUTHERN DISTRICT COURT REPORTERS US COURTHOUSE

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a letter dated February 28, 1968.

A Right.

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O And then you published another article in the National Review, correct? Let's see if we can find that one.

A That was the same one. That's the same as my column.

O The ntes in the sides, we are looking at Exhibit D, the March 12, 1968 issue --

A Co ahead.

O I note that you quote part of Dr. Littell's letter to you, that's Exhibit 17, but you leave another part of it out which is the first paragraph of his letter in which he says that he pointed out to you that honest conservatives and honest liberals should stand together against the extremist elements.

Why did you admit that in the letter?

A Because it's cant.

O Explain that. I am not sure I understand you.

A I am a professional editor. I don't republish banalities.

You don't republish analogies?

A Banalities. There is no reason to print that, everybody knows that. We always edit like the New York Times, we always edit communications that we republish. Time

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Magazine does it, Newsweek does it, everybody does it.

article, Exhibit 15-B -- I am sorry, not 15-B but Exhibit A, still wouldn't know that Dr. Littell believes that both the extremes of the left and of the right are dangerous; isn't that correct?

O. The reader of your paper or of National Review,

based upon this article, that's Exhibit D and the prior

A Mr. Blasband, I was not attempting to write a profile of Dr. Littell but to transact a specific charge that he had made against National Review and to amplify certain points of interest. This was not intended as an encyclopedic rundown on the activities of Dr. Littell.

Wasn't one of his chief complaints against you is that you didn't say that he attacked the left as well as the right?

A I am sure he has all kinds of complaints against me. Though I don't think they are substantive. The concrete ones I attempted extensively to expose to the judgment of everyone involved. I even said at the end I invite the professors of ethics to assign the blame. So that I was not trying to conceal anything. This was not an invitation to serialize the comments of Dr. Littel.

O Let's see, you publish that Dr. Littell's statement that you lie about his statements; isn't that correct?

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A I published that part of his letter which I published.

O That's right.

you a liar in your publishing part; isn't that correct?

A Yes --

are about things that aren't in the record already, fine.

If you want to ask him once why he did that or why he did that, I guess that's all right. But to say isn't it true that you published this, I really can read. I think I even have read much of this material. To some extent I am learning something because things are emphasized that I might not have caught.

MR. BLASBAND: That's half of it, your Honor.

THE COURT: But really a lot of this is pretty obvious.

- Q Did you have permission from Dr. Littell to quote from his letter?
 - A No, nor did he ask me not to.
 - O Did you ask for his permission?
 - A No, I never do.
- O Am I to take anyone who writes you a letter, it's liable to be published in the National Peview?

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A That's correct.

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() Is that a policy of the National Review?

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A Yes, sir, it is. That is to say letters about public problems.

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O How do the people who write the National Review

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know that it's policy?

A I don't know but nobody has ever complained.

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Occasionally we get letters saving not for publication, and

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of course we don't publish those.

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Q Have you ever written to someone to ask permission

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to publish a letter?

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A Only when it was on the borderline of a private and public question.

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O Can you give me an example?

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O What did he write?

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A He wrote congratulating me on one of my books. I asked his permission to use it.

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O If someone writes you a letter, you consider that you have permission to publish it if it is on a public issue?

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That's correct.

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Q Did you consider that when you published your letter to Dr. Littell, referring to Exhibit 18, the letter

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of February 28, 1968, that this would cause some kind of

A I don't want to say anything impolite, but there is a sense in which I must assume that Dr. Littell is used to

certain kinds of embarrassment.

embarrassment to Dr. Littell --

O In response to my question, did you consider that it might embarrass him?

A Did I consider that? No, I did not consider that because I assumed that Dr. Littell would not be surprised at receiving a sharp answer in response to an accusation of that kind.

Q Do you think that Dr. Littell would be surprised to find that sharp answer published in a publication with a circulation of over 100,000?

A No, because our exchange was in the nature of attempting to clarify a question for public purposes. He didn't say look let's you and I have a dialogue and forget that we both have audiences. He was exchanging comments for the record, as I read it.

O Did you read it that he was exchanging comments for the public record?

A Certainly he begun by asking me to correct in National Review and in my column or wherever what he considered to be a misrepresentation.

And you didn't correct it, did you?

We spent the last two hours trying to track down what it was that we finally ended up decided was a misrepresentation and I did correct it to the extent of publishing in this issue of National Review the whole of his complaint, the verbatim remarks from his letter, the verbatim remarks from his speech, the verbatim remarks as published in the Mational Review Bulletin.

I can't think of a more complete correction and inviting ethics professors to pass judgment on whether something heinous had been done.

O You didn't reproduce all of his complaint because you left out the first paragraph of his letter of February 14, 1968.

MR. MAHOLEY: This is repetitive.

THE COURT: Sustained.

O 'Ir. Buckley, do you know anyone at Mac'fillan Companthat has any personal animosity towards you?

A No.

O Did you know anyone from 1969 on at MacMillan that had any personal animosity toward you?

MR. MAHONEY: Objection, your Honor.

THE COURT: Sustained.

Q Referring to the book "Wild Tongues," have you read the entire work?

1	jqlm	Buckley-cross	150
2	A	No, I have not.	•
3	-()	What did you read of it?	
4	Λ	The part about me.	/
5	n	Is that all?	
6	Λ	That's all. And the reviews.	
7		MR. BLASBAND: Your Honor, can we take a	three-
8	minute 1	recess now, please? I would like to just	I think
9	it might	t expedite my cross-examination.	
10		THE COURT: I assume we could finish your	cross-
11	examinat	tion and Dr. Littell's cross-examination so	that this
12	witness	could be finished today. Am I wrong?	
13		MR. BLASBAND: I have about half an hour	or so.
14		THE COURT: Do you have cross-examination	١,
15	Dr. Litt	tell?	
16		DR. LITTELL: Yes, sir.	
17		THE COUPT: We will take a short recess.	We will
18	go until	l about 4:30 or so.	
19		(Recess.)	
20	BY !IR. I	BLASBAND:	
21	ó	Mr. Buckley, let's refer to your book "Go	od and 'lan
22	at Yale.	" That book as criticized by professors a	and over-
23	seers at	t Yale, was it not?	
24	Λ	At least.	
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And weren't you charged by some of them that you

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twisted facts?

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Λ Yes.

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O In fact, there was a review of the book by McGeorge Bundy, correct, that appeared in the Atlantic 'onthly?

A Correct.

In November of 1951?

Correct. A

Then you had a chance to respond to that review . 0 and you wrote an article in December 1951 issue of Atlantic Monthly, correct?

/ Correct.

THE COURT: When was the Bundy review?

MR. BLASBAND: The Bundy review was November 1951, Atlantic Monthly.

'IR. MAHONEY: Are these documents in evidence?

MR. BLASBAND: These are documents that were just shown to me yesterday, your Honor, by one of the people at the office, and I am just using it for cross-examination purposes.

THE COURT: Go ahead.

Let me show you Defendants' Exhibit W, I think that is, for identification, and ask if that is the article Yr. Bundy wrote about you.

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I am sure it is, yes.

To save time let me show you Exhibit X and ask if you can identify that as being your article in response.

A Correct.

O And also that contains Mr. Bundy's reply; is that correct?

Correct.

MR. BLASBAND: Your Honor, I offer both these documents.

MR. MAHONEY: Can I see those? I have never seen them.

There are seven pages of single typed here. . Can I reserve any objections I might have after I read them? I don't want to take the Court's time that I have.

THE COURT: You see if you have any objection.

MR. MAHONEY: I will see after court closes today and if there is, I will tell you in the morning.

THE COURT: All right.

MR. BLASBAND: Thank you.

Q I call your attention to Mr. Bundy's statement in the first paragraph of his article where he says "As a believer in God, a Republican and a Yale graduate, I find that the book is dishonest in its use of facts, false in its theory and a discredit to its author and the writer of its

introduction."

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Then he also on page 51 of the article it says "This total reversal of the author's intent is a measure of the honesty of Mr. Buckley's method and the sample could be multiplied a dozen times."

Then he goes on to say "This chapter shows him to be a twisted and ignorant young man whose personal views of economics would have seemed reactionary to Mark Hannah."

MR. MAHONEY: Do you have a question?

MR. BLASBAND: Yes, may I continue, please.

Then it goes on to say "In summary Mr. Buckley's basic technique is that of a pretended first-hand report on the opinions and attitudes of Tale's teachers and textbooks in which quotations and misquotations are given whatever meaning Mr. Buckley chooses to give them and not the meaning their authors intended. This method is dishonest."

Mr. Buckley, when you read this article what was your reaction to it?

- To reply.
- Were you hurt by the article?
- Sure, it's the first book review I ever had. But I was also very much heartened by some of the replies to Mr. Bundy which came from other people who had surveyed the situation more intimately than he.

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O Did you consider that Mr. Bundy's statements about you might hurt you in your career?

THE COURT: I just don't understand that.

Mr. Blasband --

***MR. BLASBAND: I am saying this, your Honor, if I may: The witness has claimed that he has been emotionally damaged by this article that Dr. Littell wrote on him. I am trying to see what kind of impact the same type of thing the he accuses Dr. Littell of saying of saying about him has hum him with respect to this Bundy article.

intensely angry and I am not sure -- when he read the book "Wild Tongues." I am not sure it's going to help me very much to find out how he felt when he read the Bundy review.

Let me ask you, Mr. Buckley, the book "Wild Tongue page 51 says by writing a book "God and Man" -- I am sorry the book, meaning "God and Man at Yale" has been soundly exposed and condemned by professors and overseers and loyal alumni for falsely twisting facts and for sheer malice.

Mr. Bundy was an alumnus of Yale, right?

THE WITNESS: Yes, sir.

THE COURT: Did any professors at Yale condemn the

THE WITNESS: Yes, several.

book?

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THE COURT: Did any overseers at Yale condemn the

THE WITNESS: Your Honor, do you mind if I ask you to be more specific. Almost everybody associated with Yale dondemned its thesis but not very many people alleged distortion, so lots of people did condemn but only one or two alleged distortion.

get down to what I think of the real issues in this case are, would think that the statement about "God and Man at Yale" on page 51 I would not think would be libelous, and I just don't see that we have to get off on "God and Man at Yale." I thin: there are other more serious problems in the case.

MR. BLASBAND: Your Honor, I do offer these exhibits --

THE COURT: I will take the exhibits.

'fR. BLASBAND: Fine.

If I may, I think they also point out that they may help solve your Honor's problem about the Westbrook Pegler.

Here is another accusation of a charge that is just as blatant as lying.

THE COURT: They have been received subject to a motion to strike tomorrow.

'D. MAHONEY: If I might state, it seems to be

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	1	jqlm Buckley-cross 156
	2	"r. Blasband's contention that whether or not how "r. Buckle
	3	reacted to somebody else is relevant to whether he chooses t
	4	sue in this particular instance, I don't see where that is a
	5	all germane.
	6	THE COUPT: I will receive W and I will receive X
	7	subject to a motion by you tomorrow morning to strike all the
	8	articles in those exhibits. You look at them tonight, okay?
	9	Have you got any other cross?
	10	MR. BLASBAMD: Yes, I do.
xxx	11	(Defendants' Exhibits W and X received
	12	in evidence.)
	13	BY MR. BLASBAND:
	14	9 Mr. Buckley, you ran for mayor of New York City and
	15	that was in 1965, correct?
	16	^ Correct.
	17	O You also ran for trustee of Yale; isn't that.
	18	correct?
	19	A That is not a political office.
	20	Q I just asked you if you ran for trustee of Yale.
	21	A Yes.
	22	O What year did you run?
	23	A 1968.
	24	O Let's talk about the term fascist. What is your

definition of the term fascistic?

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A Well, fascistic means technically like that which is fascist. It is a dilution. The word fascist can be used as an adjective. Fascistic is, as I say, a dilution.

Q Could you give us your definition of fascist?

A My definition of fascist is a movement that developed in the 20th century around Mussolini, the purpose of which was to organize society with reference to certain corporate objectives, and in the course of doing so to subordinate the judiciary and the legislature to the executive and to repeal any human rights to the extent that they stand in the way of the rights of the corporate state.

O Other have different definitions of the term fascist; isn't that correct?

A Well, if you are saying the people use terms incorrectly, the answer is yes.

O Let's take a look at Exhibit X and look at your article in response to Mr. Bundy's article.

Λ Yes.

O You say "Fascist," the word is in quotes, " has been used carelessly to describe persons and points of view."

A Yes. I didn't hear you.

O "Fascist has been used carelessly to describe persons and points of view."

You go on to say "But it fits with unusual precision

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Buckley-cross

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Q The next question I have is, do you see the word totalitarians in the last part of your private?

A Yes.

Q That is intended, is it not, to refer to Mr. Bundy and others? Read it to refresh your recollection.

A I will read the sentence.

MR. MAHONEY: He is entitled to give the context.

THE COURT: Yes.

THE WITNESS: As you know, a totaliterian can under certain circumstances be used metaphorically.

THE COURT: You read it

THE WITHESS: Aloud?

THE COURT: Any way you want.

A "The ascendancy of academic freedom cherished by these haughty totalitarians who refuse to permit the American people to supervise their own destiny is as certain as the inexorable advance of this country toward collectivism."

those who desire to impose their view without any reference to a board of constituency. I have since 1951 grown to use language more precisely, but even as sed then in my judgment it could hardly have been inferred about this that Mr. Bundy was a totalitarian in his world emalous. After all, he was a Republican among other things.

we that the state of

as regards an elitist desire to run the policies of Yale without any reference to the views of the alumni.

O I see.

There could be several other uses, I assume, of word totalitarian, depending upon the context you are usin it in, could there not?

MR. MAHONEY: He is inviting speculation.

THE COURT: Overruled.

A I suppose a 14-year-old could say a totalitarian father refused him to go to the movies that night. I am night sure the point you want me to help: a make.

- O Could you think -- what is your definition, toda definition of the word totalitarian?
 - A Today it is I think widely accepted --
 - Q I just want yours.

A Mr. Blasband, there is a certain democracy in language and usage tends to dictate its meaning. The word totalitarian is primarily to distinguish from the word despotic. Totalitarian is something who desires to control everything, whereas a despot is someone who tends to simple desire to control that which it is necessary to control in order to govern society. A difference between say the nazorder, which was totalitarian, and let's say the Portugues order, which is despotic.

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Is that a definition that you believe others accept?

A Oh, yes, no question about it. That is where total comes in.

O You have been accused, have you not, in some of your positions which you have published, people have accused you of stating that these are totalitarian type positions. V They support totalitarian movements; isn't that correct?

A I think everybody who --

o I am not saying these people are correct.

A Yes. I think everybody who, for instance, favored NATO was probably at one time or another accused of favoring the totalitarian government of Portugal as a part of NATO.

O Indeed I think I saw a column of yours not too long ago in which you used the word fascist and you mentioned Henry Kissinger in the column. Do you remember that column?

MR. MAHONEY: Objection.

THE COURT: Sustained.

THE WITNESS: A column in which those two words --

THE COURT: If you ask a question about using Kissinger and fascist in the same article, that means nothing to me.

"R. BLASBAND: I am asking if he remembers that column.

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THE WITNESS: No. What was the in between word? What was the nexus, was there any?

O The column I am referring to is a column you wrote about your visit to, I think, South Africa.

A Yes.

O There was a discussion about Henry Kissinger in the column.

MR. MAHONEY: I object to this.

THE WITNESS: I think you better retreat. I know the story and you don't.

now. We better adjourn until ten o'clock tomorrow. How much more cross do you have?

MR. BLASBAND: 15, 20 minutes, your Honor.

THE COURT: How much cross do you have, Dr. Littel

DR. LITTELL: I don't think more than 25 minutes.

THE COURT: Okay, fine.

What other witnesses do we have?

Dr. Littell, Mr. Klagsburn, whom I will call, Mr. Clement and Mr. Alexander and Mr. Henderson who are former employees

of MacMillan, and Mr. Allen Lowenstein.

THE COURT: How long do you think your case will

talie?

MR. MAHONEY: Hopefully we can get it in tomorrow.

I am not certain, your Honor, at the pace at which it will proceed. I plan to be fairly surgical in what I go after from these witnesses. I am not going to take them traipsing through to the exhibits.

THE COURT: I had scheduled a trial for Wednesday because when we were 'talking about this back in the early stages we thought this would be a short case. It doesn't look as if it will be finished entirely tomorrow night, I suppose?

MR. MAHOMEY: A great deal depends, I would think, on what Mr. Blasband and Dr. Littell -- since I am calling because of the Sullivan burden all of their witnesses, it may be that on their cross of my direct of their witnesses that they will have -- when I am finished they will be finished.

THE COURT: Is there anybody who is here -- I guess
Dr. Littell is here from out of town. But I would like to
ask you gentlemen if it would be seriously inconvenient if
we adjourned at the end of the day tomorrow and then resured
Thursday?

THE WITNESS: I have a lecture on Thursday at noon in Indiana.

DP. LITTELL: I have a problem, your Honor.

THE COURT: I will try to get my Wednesday trial put over to Thursday. We have to finish this case no later than Wednesday night.

MR. BLASBAND: I may not have anything on my side.

THE COURT: We will do the best we can.

MP. MAHONEY: If I might suggest, it's certainly your calendar, I would think that you might want to keep -there is a possibility it would be through tomorrow. You might want to keep these other people on call on Wednesday.

As I go after these witnesses, I am going to try to be fairly precise.

THE COURT: Okay, we will see.

(Adjourned to April 23, 1974 at 10 a.m.)

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of me.

THE COUPT: Mr. Mahoney, you sought to include that yesterday in the material allegedly libelous?

. MR. MAHONEY: Yes, your Honor.

THE COUPT: Mr. Blasband said that that should not be permitted and I agreed with Mr. Blasband. Two things cane to me overnight and they are somewhat related. One subject relates to the use of this particular paragraph. The other subject relates to other parts of the book.

Let's talk about the paragraph. The thing that gives me some pause about your position, Mr. Blasband, is this: I understand from your brief that you are relying on part of that paragraph to support your position.

MM. BLASBAND: That's correct.

top of page 52 that says "The streak of ideological taint and moral nihilism is too pronounced, even though he is probable not under the direct control of any subversive party." You are relying on the phrase "even though he is probably not under the control or the direct control of any subversive party."

You mentioned that in your brief and you intend to argue on the basis of that sentence, and I assume you are arguing that that has an effect on the previous paragraph?

MR. BLASBAND: Yes.

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THE COURT: It seems to me it's hard to carve out
the paragraphs. I think we have got to -- in other words, if
you are going to argue about the importance and effect of
that phrase, it seems to me that it has got to be okay for
the plaintiff if he wishes to do so to come along and say
well that phrase has got to be looked at in the context of
the next two or three sentences.

Realistically it seems to me that we have to consider the whole effect of this paragraph and the other paragraphs. I don't see any way to avoid it. Whether we say that technically this paragraph is part of the libel, I think it has to be considered on the question of what was meant and said and the total effect of this passage.

MR. BLASBAND: If I may, your Honor, I have no quarrel with your Honor's relation, except that I think the specific problem I had yesterday was that the plaintiff was seeking to inject into this case an allegation that there was a libel, that is, an untrue statement with respect to the paragraph in issue.

THE COURT: Let's leave it this way. Maybe this is cloudy and maybe it's a distinction without a difference, but I think we will have to consider this paragraph as it bears on the alleged libelous paragraphs. Maybe that is the way to handle it.

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This raises a broader question. At least one of the ultimate issues in this case is what would the alleged libelous paragraphs convey to a reader? What do they mean? What do the terms mean? Radical right, fascist.

We have focused on these paragraphs for 72 solid hours and you get that it means certain things, these paragraphs in and of themselves. But if a fellow was reading through this book, he is not going to just read those three or four paragraphs. He presumably reads the whole book or he reads other parts than these paragraphs.

Then he sees fascist or radical right on page 51, he has already read about those terms numerous times in pages -- various pages leading up to page 50. So he doesn't come across the term radical right or fascist or pseudoconservative on pages 50 and 51 as an initial proposition. He comes upon those words having read, presumably, about those terms in the earlier part of the book. Then if he goes on afterwards, he sees other discussions of the same terms.

The entire book is in evidence and I would like to say to counsel that I think that the only realistic way to approach it is to consider the book as a whole, or those portions which are relevant in defining what is meant by the terms in these two pages.

Does anybody object to that?

DR. LITTELL: Your Honor, I don't know quite what it means. I find myself somewhat bewildered because new things have come in in the last few days to which no reference has been made by the deadline when we were supposed to have things in order. Now this seems to me to be such a large issue that I would like at least to have a little time to think what the implications are.

THE COURT: Let me illustrate.

On page 51 the second full paragraph -- the second paragraph has this sentence "The National Review and his syndicated newspaper column on the right frequently print news items and interpretations picked up from the openly fascist journals and have been important and useful agencies for radical right attacks on honest liberals and conservatives."

As you think more about this you begin to think exactly -- you wonder exactly what is meant, what is conveyed by this book, by these terms -- fascist and radical right.

The reader of this book is going to see those terms elsewhere.

Let's look at page 60, for instance. A question that might occur to you in reading page 51 is: Does this book equate fascist and radical right, does it differentiate? That kind of question.

You come over to page 60 and there is some help on that question, at least as far as this book is concerned.

Because you say on page 60 about halfway down to that carry-over paragraph, "So too with the term radical right, the phrase is preferred by some writers who do not want to apply the precise rubric, which is fascism."

Then there is a discussion of fascism as it originated with Mussolini and then Hitler, Franco, Peron and then ending up saying Meven though specialists note technical differences between Italian fascism, German naziism, Spanish falangism and other radical right movements, That is an example of what I am talking about that the phrase radical right and phrase fascist is used many times throughout the book and it helps to understand one page to read another page.

I would be glad, so nobody is taken unaware, I would be glad to go through with counsel the pages that I think are relevant.

DR. LITTELL: I certainly would have no objection to 0. I would like to know, if possible, what we are talking about.

THE COUPT: I will give you a list of pages right now that I have noted, if you want to take them down. The main question is the use and the meaning of this book with

regard to the terms fascist, radical right, fellow traveler front, that kind of thing, and pseudoconservatives. These were key words in the alleged libelous passages.

I direct your attention to page 2, pages 12 and 13, pages 20 and 21, page 29, page 35, 36, 37, 38, 40, 41, 42, 43, 45, 60 and material in the appendix -- this is Appendix 2, beginning on page 130. It's a section entitled "Extremist Newspapers and Magazines," and then beginning at 133 and going through 135 there are a list of publications une r different headings. One heading is "Padical Left." One heading is "Pacist."

Those are things that I thought were of assistance.

I am sure they are not exhaustive. I also believe that it's relevant to consider the material on the back cover, on both covers, and that is about it.

DR. LITTELL: Thank you.

IR. "AMONEY: On the point you raise, I would like to say that I have certainly no objection to what has been said. I think it's also germane what the generally accepted definition of these terms is in terms of the impact.

THE COURT: Of course it is.

MR. BLASBAND: There is one point that I think might be helpful if it were clarified now. In his Complaint Mr. Buckley lumps together damages, that is compensatory and

punitive damages, in the sum of \$100,000. I would submit that at least at this point of the trial the plaintiff show tell us how he segregates those damages. In other words, I much of his damages will he be claiming for compensatory damages, that 100,000, how much he will be claiming for punitive damages.

THE COURT: I agree.

MR. MAHONEY: Your Honor, it seems that in the light -- we have an alleged special damages now and in the light of the situation here where damages are assumed in the case of a libel per se, where there is an assumption that damages have occurred. It seems to me that the primary rol in determining the allocation of damages or the award of damages, what would be general damages, what would be punitive damages, is up to the tryer of the facts.

I would say that of the sum of \$100,000 under the circumstances the bulk would be punitive damages. I don't know how to be more precise than that.

THE COURT: I agree with Mr. Blasband. There has got to be a way, if we come to the question of damages, the has to be some way of getting a handle factually on that question. It just seems to me it can't be a purely subjective matter.

I know it's going to be -- if we get to that --

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pain and suffering, that kind of thing. But I think that I would like to have from you -- because it is capable of being done, I would like to have from you a statement of what you think is a proper compensatory damage award and a factual basis for that amount.

got to be facts useful in assessing that. So you think about that and I think you ought to respond to Mr. Blasband.

MR. MAHONEY: Yes, sir.

MR. BLASBAND! I think it might be helpful if he were to respond now while Mr. buckley is on the stand, unless you give me leave to call Mr. Buckley back.

MAHONEY: I think our -- in terms of what we would say on this there are a number of witnesses whose statements are relevant in addition to Mr. Buckley. I would like to put a position in on this after we have heard from those witnesses.

Mr. Lowenstein who will testify as to Mr. Buckley's general reputation. In addition to the witnesses I mentioned yesterday, I might say that last night in going over the case we felt it would be useful and both of these would be brief witnesses, but useful to have the people who produce the television show and the person who syndicates his column

1	jqlm Buckley-cross 174
2	testify as to the impact of these allegations on Mr. Buckle
3	livelihood if accepted.
4	THE COURT: I don't want it's essential to have
5	a reasonable statement of the damages.
6	MR. MAHONEY: Yes, your Honor.
7	THE COURT: Work it out. It could very well be
8	that ander you give that, Mr. Blasband will want to ask
9	"r. Buckley some questions about that.
10	MR. MAHONEY: Mr. Buckley will be available.
11	THE COURT: Okay. Let's go ahead.
12	CROSS-ENAMINATION CONTINUED
13	BY MR. BLASBAND:
14	Q Mr. Buckley, I believe you testified that you we
15	a defendant in a libel action instituted by Linus Pauling;
16	is that correct?
17	A That's correct.
18	O Is he the only person that sned you in that action
19	A In that action?
20	O That's right.
21	A Was he the sole plaintiff?
22	O Yes.
23	A Yes.
24	O Wasn't there a man named Harper who was involved
25	in some litigation against you?

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Buckley-cross

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Senator McCarthy's activities, a point many reviews made, about the Tidings investigation substantially. It is in my judgment definitely sympathetic compared to the treatment being given routinely at the time. It was not however sympathetic enough to get Senator McCarthy's endorsement of it.

- () How many copies of that book did you sell?
- A About 30,000.
- Q How many copies of "God and 'an at Yale" have been sold?
 - A About 35,000.
- O Could you give us the sales figures of your other books?

MR. MAHONEY: Your Honor, I don't want to intrude, but I think this is a little bit irrelevant.

THE COURT: What is the relevance?

of how famous Mr. Buckley is and how his opinions, how much his opinions may affect other people's opinions, and I think to keep or get the record complete we ought to have a complete dissertation as to how many people he has reached. We have some figures --

THE COURT: I still don't understand.

'IR. MAHOMEY: It's stipulated he is a public figure.

THE COURT: Co over that again.

MR. BLASBAND: I am addressing myself now to the Times' rule, the New York Times' rule, and as we know a public figure is one who allegedly libels a public figure obtains a certain amount of protection under the Times' rule

THE COURT: He stipulated Mr. Buckley is a public figure.

MR. BLASBAMD: I think the Court may well want to consider just how famous he is. Can't a man who is engaged in controversy, publishing controversy for example, televison controversy, how susceptible is he of being libel? I think the more people he reaches, the less his protection is

He has thrown himself more into the mainstream of public criticism, public opinion than, say, an author of lesser known.

THE COURT: Does this go to damages or what?

MR. BLASBAND: This goes to the New York Times
defense.

MR. MAHONEY: He seems to be saying --

THE COURT: I just don't understand. The New York Times defense applies to anybody who comes within the public figure classification, and there is no question that Mr. Buckley stipulated he does. All that leaves is if there is no libel, of course there is no occasion to even invoke

2 Times against Sullivan, there is no problem.

MR. BLASBAND: That's correct.

THE COURT: But if there is a libel, you have to go to the Times against Sullivan. That depends then on the state of mind or the actions of the defendants, that is Times against Sullivan's problem.

MR. BLASBAND: That's right.

THE COURT: I can see possibly -- I don't see any relevance to the Times against Sullivan.

MR. BLASFAND: Let me explain it this way, your lionor. The rationale of Times versus Sullivan, as you will recall, was to promote free speech and that is when the New York Times decision was decided the Supreme Court said these are public figures, they are deserving -- maybe not deserving, but they are susceptible of a great amount of criticism, a great amount of -- bad things can be said about these people.

That was the basis of the Times decision and that is why they gave the publisher and the author the protection they gave them. My submission to you, your llonor, is --

a public figure. He has got to satisfy the Times against
Sullivan burden and that is that. I don't think it's going
to help on that issue to get the sales figures of all his

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1	jalm Buckley-cross 180
2	books.
3	MR. BLASBAMD: Very well, your Honor.
4	THE COURT: I will sustain that objection.
5	I thought I had a xerox of the Pauling decision.
6	When was that?
7	THE WITNESS: '66.
8	. MR. WILLIAMS: April 1966, almost exactly eight
9	vears ago. It was affirmed by the Court of Appeals, I thin
10	on June 15, 1968.
11	THE COURT: All of that was finished before this
12	book?
13	MP. WILLIAMS: Yes, your Honor.
14	THE COURT: The Vidal litigation, was that
15	concluded before '69?
16	THE WITNESS: No, sir, it was not. That was
17	concluded in the fall of '72, wasn't it?
18	MR. WILLIAMS: Yes.
19	THE COURT: When was it started?
20	THE WITNESS: In 1969.
21	THE COURT: So the Vidal litigation was started i
22	THE WITNESS: The spring of '69.
23	TR. WILLIAMS: There were two lawsuits, one again

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brought in August 1969.

Vidal brought in May 1969 and one against Esquire Magazine

THE COURT: And all that was wound up in '72?
THE WITNESS: Yes, sir.

BY MR. BLASBAND:

Q "r. Buckley, we heard testimony concerning fascist journals and I believe that you mentioned the journal Common Sense as being a fascist journal in the sense that it has a connotation of being anti-Semitic. Am I stating your testimony correctly?

A Yes, you are.

O Can you give us in your opinion the names of some other fascist journals in this country?

A Well, I have here the page to which Judge Griesa called our attention a moment ago which I hadn't seen before, page 134.

O What page are you looking at?

A Page 134 of "Wild Tongues." It reminds me of the existence of a magazine called The Cross and the Flag which I think could legitimately be called a fascist journal.

Q Why is that?

A For the same -- roughly for the same reason as Common Sense.

O Because it's anti-Semitic?

A Yes, it's thoroughly racist and -- I have only seen two copies in my life. I am conveying primarily an impression

the defendants in that trial during the second world war.

It involved Sylvester Veery.

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THE COURT: She put out a periodical?

THE WITNESS: Yes, sir.

THE COURT: When did she do that?

THE WITNESS: It was being published through the fifties and for all I know it still comes out every now and then. I just plain don't know.

O How about the American Hercury?

A The American Mercury I have seen only one issue in the last two years, the current one in which I am attacked. I think that would be borderline.

Didn't the American Mercury have some reputation of being anti-Semitic?

Definitely. That is when I issued the announcement to our writers that they could not write for it and us.

0 I see.

When did it become anti-Semitic, in your view?

It was bought by somebody who was himself anti-Semitic, I think, but he had to hire to run it who has exercised penipotentiary power. It was only when the publisher himself took over that it became anti-Semitic at which point the whole of the old staff resigned. That would have been about 1936 or 7.

Can you think of any other fascist journals?

I suppose the Ku Klux people have a paper. I have

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never seen it but I would assume it a fascist.

- O Hr. Buckley, do you know of anyone who has though less of you as a result of their reading of this book "Wild Tongues"?
 - I should think anybody who has read it.
- Mr. Buckley, do you know of anyone who has through less of you as a result of their reading "Wild Tongues"?
 - A Are we back to the special damages question?
 - 0 Mr. Buckley, please answer my question.
 - A No. I don't.

MR. BLASBAMD: That's all, your Honor.

THE COURT: Dr. Littell.

DR. LITTELL: Your Honor, yesterday we spent some hours in a kind of a seminar on various political philosophies and terminologies and I will try to make my questions rather brief. And I will deal primarily with facts although I have accompted to move in another direction.

CROSS-EXAMINATION

BY DP. LITTELL:

- Perhaps I should say Dr. Buckley if I am speaking to a specialist in this area.
 - "r. is fine.
- Yesterday I think a list of honorary degrees were submitted.

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will reserve Dr. for you, all right?

DR. LITTELL: You can use any term that you wish there too.

THE COURT: Fine.

spondence between my client, Reverend Mr. Littell, and yourself. We had an exchange, he informs me in which I think to avoid argument I will say there were mutual discourtesies. Then after this occurred I am informed that there was published in the Mational Review the letter when he sent to ou at that time.

may confuse me although everybody else may know. Don't refer to Dr. Littell as he. Do you get me?

DR. LITTELL: I was thinking that I was speaking here for my client rather than for myself. If you prefer --

THE COURT: Just speak naturally and refer to yourself. You certainly have a right to do that. You are representing yourself otherwise we might get a little mixed up.

DR. LITTELL: Thank you, your Honor. The precise legal form is something I need to be schooled in. I was concerned as far as the conclusion of the exchange, and it

was called to my attention just a few weeks ago a wrap-up, a I believe you considered it, in the National Peview. A letter was published I believe concluding letter to you and then your comments on it.

- O Did you send a copy of that to me?
- A Did I send a copy of what?
- Of your publication of my personal letter to you and your compent on it.

THE COURT: I think that is Defendants' Exhibit B. That is the March 12, '68 letter. I think it would be good to give Mr. Backley, if he doesn't have it, this set of papers.

THE WITHISS: I have it, sir.

A No, I did not send it to you. I assume you supplied the National Review since you are an authority on extremist publications.

- () Are you aware that I saw it for the first time six years later?
 - A No, I am not.
 - Q Thank you.

followed the lead of any organizations or the line as it would be called technically like fellow traveler, innocence and so forth, the line of various radical right organization

2 or journals. Am I right in that memory?

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A You are correctly saying that I testified that the sentence you used -- and I am looking for it -- was incorrect.

O Excuse me, I was referring to your testimony yesterday, not to my writing.

Mere is the sentence, National Review and the syndicated newspaper column on the right frequently prints news items and interpretations picked up from the openly fascist journals. I denied that.

O In testimony yesterday didn't you say that you did not rely upon other journals in that sense?

A That is too broad, Dr. Littell. I rely a great deal on other journals.

THE COURT: We are going to have a record of what is testified to yesterday and it doesn't help us very much to ask if he testified to this yesterday. Please ask direct questions and I am sure you have notes you can build on yesterday's testimony, but let's not argue about what it was or was not said yesterday. It's all in the record.

DR. LITTELL: All right, thank you, sir.

O Are you aware that the John Birch Society Montly Bulletin, December of 1966, published a major attack on the Institute for American Democracy and myself as its chairman?

1 .lo, I am not.

THE COURT: I just can't take notes fast enough to

DR. LITTELL: I submitted this list, sir.

THE COURT: Was there a third?

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DR. LITTELL: Yes, the third was January 11, 1967,

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THE COURT: You were not aware of any of these

radio broadcast by Richard Cotton using the same material.

attacks; is that correct?

THE WITNESS: That's right, and in the case of Cotten I never heard of him.

THE COURT: Co shead.

O In January of 1967, the same month, were you aware of a whole issue of Edgar Bundy's News and Views devoted to attacks on me?

A I was not personally aware of it, but someone in my office was aware of it, I assume, because at some point I think in 1968 we made some reference to the IAD and some v acknowledgment of the pamphlet or whatever it was, the publication put together by Edgar Bundy.

MR. MAHOMEY: Your Honor, if I might just interject, you will find that all of this is under general case on Plaintiff's Exhibit 20. It might help you to follow these names and so forth. He is just going down Plaintiff's Exhibit 20 at this point, just in terms of your getting the names.

THE COURT: I don't have Plaintiff's Exhibit 20 right now. I would like to have it.

(Pause.)

THE COURT: I don't think we marked 20.

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MP. MAHONEY: I am sorry, that has been marked but not received. It's not received in evi acc.

THE COURT: Go ahead, Doctor.

O Were you aware, Mr. Buckley, that on January 17th of '67 an editorial appeared in the Indianapolis News published by a member of the National Review Hoard, incidentall on the same line with the same emphasis attacking me?

A The answer is negative. No.

THE COURT: You know a lot more about this than I do, Dr. Littell, so I have to follow it slowly. What was the last question?

(Ouestion read.)

THE WITNESS: Dr. Lettell, may I correct the recor the Indianapolis News is not a publication of National Revie

O I didn't say it was. I said it was published by a man who is on the National Review Board.

A You mean written? Do you mean written by, because the Indianapolis News is published by a corporation we have no relation with.

Q The publisher of record is Stanley Evans.

A He is the editor, not the publisher, and he is not a member of our board, he is a contributor to National Review He is a full-time employee of the Indianapolis News and its editor.

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1 2 Q It's on the manuscript of National Review, am I 3 right? 4 THE COURT: Let's see where we stand. You are 5 saying that in January 1967 there was an editorial in the

DR. LITTELL: Me.

Indianapolis News attacking whom?

THE COURT: You?

Whatever it is, you were not aware of this item in the Indianapolis News?

THE WITNESS: It's written by the editor of the Indianapolis Meys who also writes for us.

THE COURT: All right.

Were you aware that a major section of the Christian Crusade put out by Billy James Hargis appeared in June of 1967 using the same naterial with the same emphasis?

Λ No.

THE COURT: The same material and same emphasis as what?

DR. LITTELL: As every one of those on the list preceding.

THE COURT: In other words, an attack on you?

DR. LITTELL: Right.

THE COURT: In other words, an attack on the American Democracy also?

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DR. LITTELL: Yes.

THE COUPT: And this was what publication, June '67

DR. LITTELL: It was a special pamphlet of 10 or 12 pages of which I have xerox copies in case you wish, your Honor.

THE COURT: Put out by who?

DR. LITTELL: Billy James Hargis 62 Tulsa, Oklahoma

THE COURT: Were you aware of that?

THE WITNESS: No, sir.

Were you aware of a column August 12th of 1967 written and distributed by William Rentschler of Illinois using the same material?

1 Yo, sir.

O Were you aware, Mr. Buckley, of an attack on me published in Western Voice, Fort Worth, Texas, May 2nd, 1968, using the same material?

A No. I never heard of that publication.

O Were you aware that in June of '68 a whole issue of Edgar Bundy's News and Views was devoted to an expanded attack on me?

A That must have been the issue that I confused with the January '67 issue because chronologically it makes sense that that would be the one on the basis of which National Review ran an editorial in the mid-summer of '68.

THE COURT: Dr. Littell, what was this June 1968?
This was again an attack on you and the Institute for American Democracy, right?

DR. LITTELL: Yes, mostly on me.

THE COURT: I am not clear what happened on your side.

THE WITNESS: We apparently received that publication at National Review and ran an editorial on the IAD based on the factual information put together. That pamphlet.

THE COURT: The National Review Tan an editorial?

THE WITNESS: Yes, sir.

THE COURT: I guess we can find out what the editorial said.

Go ahead.

Q Mr. Buckley, were you aware that in November of 1968 another whole issue of Mr. Bundy's News and Views were devoted to an attack on me?

A I don't recall it, no.

Q Am I right that in January of 1969 in your column in Mational Review an attack was made on me using the same emphasis and some of the same phrases as those in the sequence to which I have just referred?

THE COURT: That must be in evidence so we don't have to deal in these vague terms.

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'IR. MAHOMEY: There is no such document in eviden your Honor.

THE WITNESS: It's not in evidence and doesn't exist.

THE COURT: All right.

DR. LITTELL: Yes.

- O The column does not exist, do I understand?
- A Not in January.

THE COURT: What is it you are referring to? Do you have the item you are referring to? That is January '6

THE COURT: Do you have it in court?

OR. LITTELL: It was under discussion yesterday, your Honor.

THE COURT: Where is it?

DR. LITTELL: I can find it in a minute.

think that there is a confusion in Dr. Littell's part between that and the editorial I referred to earlier just a few more earlier than that.

DR. LITTELL: May I read it, sir, or shall I sim turn it in to you?

THE COURT: Why don't you have it marked for identification.

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	1	jalm Buckley-cross 195
	2	THE WITNESS: If I can see it, I can probably save
	3	you a lot of trouble.
	4	MR. MAHONEY: Why don't we mark it.
xxx	5	(Defendants' Exhil it AA marked for
	6	identification.)
	7	THE COURT: It's Defendants' Exhibit AA marked for
	8	identification. Let's see what it is.
	9	MR. MAHOMEY: All right. I have no objection to
	10	receiving this in evidence, your Honor.
	11	THE COURT: It hasn't even been offered.
	12	Dr. Littell, show it to !'r. Buckley so you can get
	13	your signals straight.
	14	THE WITNESS: This is not January 1969. This is
	15	the one I was referring to earlier. I think it's November
	16	'68.
	17	MR. MAHONEY: Sometime in Movember 168.
	18	THE COURT: This is National Review editorial?
	19	THE WITHESS: Yes, sir.
	20	MR. MAHOMEY: Is it the 'eview or the Bulletin? It
	21	appears to be the magazine.
	22	THE WITNESS: The magazine.
	23	O But the date is wrong?
	24	Yes.
	25	TP. MAHONEY: That would be the magazine; is that

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	1	jqlm Buckley-cross 197
	2	THE WITHESS: That's correct.
	3	THE COURT: . Do you want this pack, Dr. Littell?
	4	DR. LITTELL: No, sir.
xxx	5	(Defendants' Exhibit AA for identification
	6	received in evidence.)
	7	THE WITNESS: I don't mean to stop you, but go
	8	ahead.
	9	THE COUPT: Go shead.
	10	BY DR. LITTELL:
	11	9 Mr. Buckley, were you aware when you published
	12	these attacks on the subject to discussion in this case that
	13	I was a clergyman?
	14	A What attacks, Dr. Littell?
	15	Q The attacks which were made on me by you or the
	16	National Review prior to the publication of this book.
	17	A I was aware that you, were a clergyman as of the
	18	moment I saw the item in the Rocky Mountain News which would
	19	have been in the fall of 1967.
	20	. At the time you published the attack when I was
	21	supposed to have spoken to the National Education Association
	22	you weren't aware that I was a clergyman?
	23	THE COURT: He has said that he was aware of it
	24	from the item in the Rocky Mountain National News. Doesn't
	25	that take care of your question? I just don't want to

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If you took it that seriously, then why did I no

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Mo, I said that we do not use pickup material from "openly fascist journals." I went then at some length to give an illustration of the circumstances under which we would pick up an item from a radical right paper.

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You said that you do to rebut them as I recall. THE COURT: Wait a minute. Don't interrupt the I would like to hear the rest of the answer. witness.

THE WITNESS: To which question?

THE COURT: You started to say you went to some length to explaining under what circumstances you would and what was that?

THE WITNESS: You mean to give you the illustration

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THE WITNESS: The illustration I gave yesterday was that if it happened that a "radical right journal" uncovered piece of factual information which was a public interest, having verified that information I would not hesitate to passit along. If the John Birch Society had discovered the

THE COURT: Right.

Q In other words, you would under certain circumstances draw upon journals or materials from organizations of the radical right?

Watergate scandal, we would have published it.

A from any organization in the world, including the Communist Party.

On In your testimony you said, did you not, and correct me if I am wrong, that the Blue Book was chiefly objectionable because of its confusion and lack of organization but that you found a politician to be absurd.

A Those weren't my words, Dr. Littell.

THE COURT: What is your question? Are you asking if he said this yesterday? Again, the record will show it. What is your question today?

DR. LITTELL: My question today is that based upon the assumption that he did indeed distinguish between the Blue Book and the politician, and I want to be sure that I

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not misquoting him or misinterpreting what he said.

THE WITNESS: May I ask a question. I don't mind being asked do I stand by the testimony of yesterday to which my answer is yes, but I would not like to get on the record an apparent endorsement of his characterization or his paraphrase of my remarks yesterday.

yesterday's testinony. I think you are wasting time. If there are new questions, but to simply say am I interpreting yesterday's testimony correctly, generally that is not any help because you don't have a transcript and generally we can probably interpret it when we do have the transcript.

What are your new questions?

- Q May I ask simply what is your judgment then of the Birch Society's Blue Book?
- A I read the Birch Society Blue Book in 1959, that is 15 years ago. 'My memory of it is that it is highly confused, not particularly illuminating, that it is primarily an attempt at a sort of an organizational manual designed to harness activity in behalf of "right wing goals" and that is my memory of it.

It's very loquacious and long-winded. It's about 200 pages long, 175 pages long.

() Do you recall the statement that the John Birch

A 'y answer to your question, Dr. Littell, is that I was hardly in a position to criticize that being the sole owner of Mational Review which has no parliamentary body of its own.

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Do you think he was referring to the publication o a magazine or referring to the political process?

No, I understood him to be saying that he was

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going to be the sole executive voice in handling the affairs of the society he founded.

- O Right. Dynamic personal leadership.
- A Whether dynamic or not.
- O Do you recall the statement we should organize fronts, little fronts, big fronts, temporary fronts, permanent fronts, all kinds of fronts? The communists have been far smarter than we. They would never thingk of setting up publicly for instance a committee to promote communism. The most effective fronts at both sides are ad hoc committees aimed to accomplish or at least publicize one particular purpose.

A In answer to your question do I remember it, no, I do not remember it. But I do not find it scandalous if that is what you are asking.

O Pardon?

A . I say I don't find it significantly different from what the Republican Party does or the Democratic Party.

Q I am sorry, I didn't hear.

A I say I do not find that significantly different from tables of political organization as followed by, for instance, the Young Democratic Society or the Young Republicans or whatever.

O You don't consider the setting up of false fronts

political field?

particular end.

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A You would have to be more specific, Dr. Littell. If the purpose of those fronts is to disguise a relationship, then why, yes, I agree with you but not if the purpos of that front is simply to provide a vehicle through which people are normally attracted for the achievement of a

For instance, if I had --

Q Then it isn't a front?

MR. MAHOMEY: Let him finish please.

A It would be definitely a front. I will give you on example. If you had let's say intellectuals for 'cGover even though it didn't have the word democratic on it but it was actually in fact organized by the Democratic Party, it would be technically a front, but I don't consider it neces sarily reprehensible.

O Excuse me. I think you and I have a quite different understanding of a function of a front. I believ Mr. Welch is saying to us as the communists have demonstrat to us for many years that false fronts, all fronts are set in order to disguize the real sponsorship.

I will drop the point, your Honor, because we differ as to the definition of terms.

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However, may I ask quickly then, are you familiar with the Campaign for the 48 States?

A I am familiar with --

Q A front called that?

A Why do you say a front? Excuse me. I am not familiar with the front called that. I am familiar with an organization. In fact, I think I contributed to it. As I remember it only lasted a year or two and expired in the fifties.

Q Yes. It might fit your term better than my term, but I see that William F. Buckley, Jr. is on the advisory council. Are you familiar with the Committee for the Monroe Doctrine?

A I am indeed.

MR. MAHONEY: I fail to see the relevance of any of this, your Honor.

THE COURT: Where are we going?

DR. LITTELL: I am entering into the record that at the time I was preparing these two pages, and specifically a half page referring to Mr. Buckley, I had in my material at hand a wide sweep of material indicating that he was in the letterheads and the organizational maelstrom of the radical right.

THE COUPT: Look --

here.

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MR. MAHONEY: We have three pages of alleged libe

THE COURT: I get your point, Dr. Littell. The only thing is that I assume at some point you are going to introduce evidence explaining the significance of these organizations, because right now they are not familiar to me at all.

DR. LITTELL: They were in the pack of data --

THE COURT: That pack was not in evidence and that pack was not exactly self-explanatory either. In other words, you are trying to connect Mr. Buckley with various organizations and at a later time you will introduce evidence about the characteristic of those organizations, right?

DR. LITTELL: Yes, sir.

THE COURT: Okay.

DR. LITTELL: We are speaking of the relevant period before *68.

THE COURT: Okay. Where do we stand on the Committee for the Monroe Doctrine? You are familiar with that?

THE WITNESS: I founded it.

THE COURT: Okay.

O You were, were you not, on the National Advisory

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Buckley-cross

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Council for the Campaign for the 48 States?

A I guess I was, yes. I never attended a meeting or anything.

Are you familiar with the Committee Against Summit Entanglements?

A May I make a correction. Hy memory is that it was actually my father who was a member of the advisory council and that they mistakenly used my name but I didn't object very strongly.

Q The advisory council of the Committee for the Monroe Doctrine?

A No, the 48 States.

O Where is says William F. Buckley, Jr., New York, New York, of the National Advisory Council, that is an error?

A It is actually an error, but I am not going to make heavy weather over it.

O So you accept the general association in principle?

A Yes.

O Are you familiar with the Committee Against Summit Entanglements?

A I am familiar with it, yes.

O What was your connection with that committee?

A I permitted the use of my name on an ad in the New York Times.

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1.	jqlm Buckley-cross 209
2	"Question: Unless it is classified, could you
3	tell us what you did with the CIA?
4	"Answer: It is classified."
5	Q Mr. Buckley, did you consider that relationship a
6	serious one?
7	A I don't understand the question.
8	Q Did you consider your responsibility to the CIA a
9	serious responsibility?
10	A Of course, ves.
11	Q As serious for example the moral implications of
12	the correspondence which we had at the
13	MR. MAHOMEY: Objection.
14	THE COURT: Sustained.
15	DR. LITTELL: Excuse me?
16	THE COURT: I sustain the objection to the
17	question.
18	Mr. Buckley, did you take an oath when you went to
19	work for the CIA?
20	MR. MAHONEY: Objection.
21	THE COURT: Sustained.
22	DR. LITTELL: May I approach the bench?
23	'R. MAIONEY: Should I join him, your Honor?

THE COURT: Yes.

(At the side bar.)

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THE COURT: All right.

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Are you going to question Mr. Buckley about this? MR. MAHONEY: No, your Honor. I just wanted to ge that in since you asked for it and we had the information.

either way.

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THE COUPT: I asked to have it available as a possible source of information. I gather from Mr. Blasband that he will contest the admission of that book into evidence or reference to it, and so I think, unless you need to

question Mr. Buckley about that, I think we better defer that

At your pleasure, your Honor, it's a matter of 30 seconds

MR. MAHONEY: All right, fine.

REDIRECT EXAMINATION

problem until a later time.

BY 19R. MAHONEY:

O Mr. Buckley, in going over Plaintiff's Exhibit 20, I believe that Dr. Littell skipped one item. He has a thing here on page 2 of Plaintiff's Exhibit 20, 1968 date, no date, Hargis pamphlet "Know Your Enemy," 11 pages at 8-1/2 by 11, same material as JBS material --

MR. MAHONEY: I am referring to page 2 of Plaintiff's Exhibit 20. I am looking at Item 6 under general case. 1968, no date, Hargis pamphlet "Know Your Enemy," 11 pages at 8-1/2 by 11, same material as JBS Bulletin and Loaman material.

Are you familiar with that document?

A You are a little bit shead of me. I haven't even found what you are reading.

1	jq1m	Buckley-redirect	212
2		THE COURT: It's the second item on the secon	d pa
3		MR. MAHONEY: Plaintiff's 20.	
4	Λ .	December '66 JBS Bulletin, December 1?	
5	0	No, that is general case. Go over the next p	age
6	to Item 6	of general case, the second page.	
7	Α	I got it, okay.	
8	Ó	Item 6, Hargis pamphlet "Know Your Enemy," ar	e yo
9	familiar w	with that? Have you ever seen it?	
10	A	I never have, no.	
11	ú	Mr. Buckley, the editorial that has been intr	oduc
12	in evidenc	ce from Master of the Week of November 1968, d	0 70
13	remember w	whether you wrote that?	
14	A	No, I don't. I have a way of finding out, bu	t i
15	don't reme	ember whether I wrote it.	
16	ij	Could we get that later then, your Honor? Co	uld
17	he find or	it when he put that in later?	
18		THE COURT: All right.	
19	, Q	We heard that you were on the Committee on Su	mmit
20	Entanglemo	ents which was put together by Robert Welch.	Was
21	the John B	Birch Society in existence at that time?	
22	٨	It might have been in existence but it was ve	ry
23	secret.	did not know about its existence.	
24		Mr. Mahoney, the reputation of Robert Welch i	n
25	1959 was v	very, very high, as the signers of that docume	nt I

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THE COURT: The trouble is with the references to these organizations there was no time given.

THE WITNESS: But I can do that, your Honor, if you want.

THE COUPT: I think it would help.

THE WITNESS: The Committee Against Foreign

Entanglements --

think would attest.

THE COURT: Summit.

THE WITNESS: It was the ad hoc committee organized a by Pobert Welch to protest the invitation to Khrushchev to visit the United States and the signers of that manifesto included some rather illustrious men.

0 We have said 1959. Khrushchev visited in 1958, did he not?

A He visited twice. Was it '58 the first time?

In any case, the John Birch Society was founded in late '59 or '60 and the Eisenhower book which was the big scandal was not revealed until '00 or '61, so that nobody signing that document in 1958 or '59 had any reason to suppose that he was associating with somebody who was claborating a thesis. That Eisenhower was competent.

THE COURT: The material about competent of the John Birch Society came up when?

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THE WITNESS: '60, '61.

THE COURT: Do you have any more precise date of the time of the Committee Against Summit Entanglements --

THE WITNESS: It would have been '59 if it was the second Khrushchev visit. My guess is that it was the first Khrushchev visit. '58 or '59, yes.

DR. LITTELL: Your Honor, I have the exact date, if you please.

THE COURT: What is that?

DR. LITTELL: It was announced in an ad that appeared in the New York Times on August 30, 1959.

THE COURT: Does that sound right?

THE WITNESS: Yes, sir.

UR. MAHONEY: You are not looking at an ad, you are looking at a note you made?

DP. LITTELL: I am looking at a xerox of the material.

O Mr. Buckley, let's get the dates on these other organizations. I am not sure I remember all those.

THE COURT: Can I interrupt. It just helps me to get more specific. Who were the men, who were some of the other men involved in the Committee on Summit Entanglements?

MR. MAHONEY: Do you have that?

DR. LITTELL: I have a whole list here.

1	jqlm Buckley-redirect 215
2	MR. MAHONEY: Has that been marked?
3	DR. LITTELL: Shall I have this marked in evidence,
4	your Honor?
5	MR. MAHONEY: Your Honor, I think this may be one
6	of the items we got last Friday. Defendants' Exhibit K for
7	identification, your Honor.
8	THE COURT: What is that?
9	MR. MAHONEY: This has been marked for identifica-
10	tion. Page 1 is a group research description of the
11	organization which we don't necessarily adopt. Page 2 is
12	an excerpt from a full page ad in the Times and shows who
13	was on the committee.
14	Why don't we just
15	THE COURT: You offered that?
16	
17	MR. MAHONFY: Why don't we offer this into evidence
18	THE COURT: Any objection?
19	MR. MAHONEY: Do you have any objection to this
20	Defendants' Exhibit K being received in evidence?
21	MR. BLASBAND: I have no objection.
-	DR. LITTELL: No objection.

THE COUPT: Received.

(Defendants' Exhibit K for identification received in evidence.)

BY MR. MAHONEY:

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Buckley-redirect

0 What were the other organizations -- didn't they talk about the Committee for the Monroe Doctrine?

THE WITNESS: Your Honor, did you ask for some names of other people?

THE COURT: I assume they are shown on K, but I would like to see K if I could.

THE WITNESS: I would like to see K too.

For instance, Senator Goldwater was on the executive committee.

THE COURT: All right. You go shead, Mr. Mahoney.

O Maybe we can get a date on the Committee for the Monroe Doctrine, that was referred to.

A I have here the committees and masthead. I am trying to remember whether it was '61 or '62 or it was around then. It was shortly after the missile crisis, I think. That was October '62, wasn't it?

Q Yes, that's when it was.

And the Campaign for the 48 States --

THE COURT: What was the purpose of the Compaign for the Monroe Doctrine?

THE WITNESS: The purpose of the Committee for the Monroe Doctrine was to stimulate the enforcement of the Monroe Doctrine rather than its abandonment after the Sovietization, satellitization of Cuba by the Soviet Union.

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THE COURT: Can you be more specific? What was it directed against? The Castro regime of Cuba?

THE WITNESS: It was directed to the goal of restoring the Monroe Doctrine as effective in this hemisphere. It had never, as you know, formerly been abandoned, but it had been de facto abandoned when President Kennedy in his agreement with Khrushchev agreed to make no further efforts to terminate Soviet influence in Cuba.

THE COURT: So it was directed at actual or potential Soveit influence over Cuba?

year-old doctrine that said that the United States would not tolerate the subjugation or the colonization of any country in this hemisphere by a country of another hemisphere.

O Mr. Buckley, the Compaign for the 48 States, to have any memory about that? Is that the one you testified your father belonged to rather than you?

A No, I had some involvement with it, but I was never a member of the executive committee. That was I think my father.

Can you place that by date? And I refer you to Exhibit II, Defendants' II for identification, as possibly a source to refresh your recollection.

A Does II come after G?

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Yes.

A I see something that says National Advisory Board, but it doesn't say what organizations.

I think it's the one before.

A It was organized it says here in 1955 by Congressman Ralph Quinn.

THE COURT: What was its purpose?

THE WITNESS: As a matter of fact, it was extraordinarily inactive but its purpose was to try to resist the centralization of power in the federal government by restoring or putting special emphasis on the Minth and Tenth Amendments, but I am not aware that it was ever active I certainly didn't run into it. I am thoroughly sympathetic to its goals.

O Do you have any indication or notion of when it went out of business?

1 I think it lasted two or three years but it just sort of fell apart. I remember they didn't think it was too good for them to rename it as the Compaign for 49 States when Alaska was admitted.

MR. MAHONEY: I don't recall, your Honor, was there any other organization that Dr. Littell brought out as to which we should get a date on the record?

Do you remember, Mr. Buckley?

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THE WITHESS: I only wrote down those three.

THE COURT: That's all I have.

MR. MAHONEY: I didn't think there was but I wanted to make sure.

O Mr. Buckley, the controvery that you had with the John Birch Society in 1965, have you ever had any occasion to make an analysis of the impact of that controversy in National Review in economic terms?

A There were two.

MR. BLASBAND: Objection, your Honor. I don't understand the relevancy.

MR. MAHOMEY: What I am trying -- the line of question I want to go into at this time is since it said that Mr. Buckley in effect parroted the radical right, I want to bring out very briefly four or five instances of occasions where he has been in open public controversy with them.

MR. BLASBAND: I don't quite understand how financial impact of the National Review --

THE COURT: I would certainly receive evidence about controversies or conflicts between Mr. Buckley's publications and the John Birch Society, but as far as an instance of whether that conflict reduced or augmented the revenues --

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Buckley-redirect

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MR. MAHOMEY: I don't say that that is irrelevant I do think it shows something about the pitch and intensity of the controversy that occurred.

> THE COURT: Let's just start with the con oversi "IR. MAHONEY: All right.

THE WITNESS: Our first "attack" on the John Birs Society was 1962, not 1965.

THE COUPT: This was National Review?

THE WITNESS: Yes, sir, we had a very extensive attack on the John Birch Society in 1962 making however the distinctions I alluded to yesterday.

In 1965 we went that step further that I describe yesterday in an extensive attack on the Society, I think a copy of which was introduced into the record. This results in a considerable furor and in a great many denunciations of National Review and of me by that organization which sought very actively to damage us financially and did.

O And is this --

MR. BLASBAND: I move to strike the witness' testimony concerning the financial damage. I don't really quite understand that !'r. Buckley was aware of the objection I had placed.

THE COURT: Look, I just didn't want to get into lot of details but I think the answer is okay. It's a

general statement. It's admissible. It's a general statement of a conflict between the two groups. That's all.

Q Was it in the course of this controversy in 1965 that you made the statement one continues to wonder how it is that the membership of the John Birch Society tolerates such paranoid and unpatriotic drivel?

A Correct.

- O What was your reference in that statement?
- A What was my reference?
- Q Yes, what was the paramoid and unpatriotic drivel to which you were referring?

A load devoted a column or two to an examination of their most recent publication, analyzed it, revealed that it was preposterous and other things and came to that conclusion, to the conclusion that the majority of the numbers of the John Birch Society, insofar as they continued to acquiesce in the leadership of Robert Welch, could no longer plausibly resist such characterizations of the John Birch Society as I then proceeded to make.

MR. BLASBAND: Your Honor, since the witness has testified about something that is written, may we have the writing?

MR. MAHONEY: May you what?

MR. BLASBAHD: May we have the writing.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 291-4020 MR. MAHONEY: It's in evidence. It was introduced

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3 vesterday.

THE COURT: Isn't that 42 or 43?

MR. MAHONEY: Yes.

Mr. Buckley, have there been other occasions without specifically trying to characterize the people with whom you engaged in controversy, but have there been other occasions when you have engaged in controversy with people that are clearly to the right of you in the American political scene?

- I don't like that formulation --
- O Let's say the radical right then.

A Suppose Professor Friedman said that he believed in the abolition of the income tax, I would continue to treat him with respect. I would not continue -- .

O Let's get to some specific examples. Have you had controversy with Liberty Lobby?

A Lord, yes. I should have mentioned it as an open! fascist journal. I consider it to be.

Q Would you describe that controversy to the Court? THE COURT: Liberty Lobby?

THE WITNESS: Yes. Liberty Lobby is controlled by a man called Willis Carto who also controls the American Mercury. Liberty Lobby publishes a thing called the

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1	Buckley-redirect 223
2	Washington Observer and it has long since concluded that 1
3	am a Jewish communist Zionist plot.
4	MR. BLASBAND: Just for the Court's attention that
5	Liberty letter is found on page 134 of the book "Wild Tongues
6	THE COURT: Okay.
7	O Mr. Buckley, for how long has this controversy
8	between Liberty Lobby and National Review been going on?
9	A It's not a controversy in the sense that National
10	Review has only participated in it only once.
11	Q What was the means of that participation?
12	A We ran an eight-page expose of Liberty Lobby two
13	or three years ago. They threatened to sue and of course
14	didn't.
15	THE COURT: National Review ran what
16	THE WITNESS: Seven- or eight-page expose.
17	THE COURT: When was that?
18	THE WITNESS: Mr. Williams would know - three
19	years ago?
20	MR. WILLIAMS: About, I don't recall the exact year
21	THE COURT: Two or three years a
22	O Mr. Buckley
23	THE COURT: Let's take our recess now.
24	(Recess.)

MR. MAHONEY: Your Honor, we have put Exhibit K in

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evidence. Since the Committee for the Monroe Doctrine which is Defendants' Exhibit J for identification and the Campaign for the 48 States which is Defendants' marked for identification II, since they both include letterheads of the personnel involved, I would like to put -- I would like to offer them in evidence at this time.

THE COURT: H and J?

MP. MAHONEY: Yes.

THE COUPT: Any objection?

MR. BLASBAND: No objection.

THE COURT: Received.

(Defendants' Exhibits II and J for identification received in evidence.)

THE COURT: J is the material of the Monroe Doctrine Committee?

MR. MAHONEY: I believe so. Let me check.

J is the Monroe Poetrine and H is the Committee for the 48 States.

O Mr. Buckley, turning to Exhibit H for identification, can you identify any of the people --

Is that the Honroe Doctrine?
THE COURT: 48 States.

O That is the 48 States. Some of the people, the trustees are adequately identified 1 suppose.

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A l'ine doesn't sav H.

O Do you see .it?

A Yes, it says National Advisory Council?

O Yes. Can you identify any of those people?

A I can identify a great many of them. Starting at the beginning?

O Yes.

A ls it the purpose to seel to identify people who have very good reputations, is that the idea?

Q The purpose would be just to give any sampling of who these people are.

A Dr. Donald Cowling was president of Carleton

College. Albert Hawks was a United States senator from

New Jersey. Going down the list Sprule Braden was ambassador to Cuba. Howard Buffen was a congressman. Frank Chartroff was sort of a free-lance writer and intellectual, a disciple of Albert J. Knock. Kenneth Colgrove was professor at Northwestern University.

Is that enough or should I keep going?

I think that's enough for a sampling.

Over on Exhibit J. the Monroe Doctrine, where they list there, can you identify any of those people there for us

A I have a list but it doesn't say Monroe Doctrine on it.

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0 I think you are too early.

has just been elected to Congress from Maryland. He was then president or chairman of Young Americans for Freedom. Professor Anthony Buscaron is of course well-known. We have Braden again. Daniel Buckley is an aide to my brother, Senator Buckley, though not related. James Burnham is of course well-known, professor of philosophy at NYU and Stratgis. Jasper Crane is an executive of the duPont Compar Dobie Reansky is at Georgetown University. John DasPasos is well-known. Douglas Ellerman is a principal real estate figure here in New York.

O I think that is an adequate sampling.

THE COURT: What are these documents? You have a cover sheet. Is this something that Dr. Littell made up?

MR. MAHONEY: There is an outfit called Group Besearch, you Honor, whose main purpose was to do research on conservative organizations, organizations on the right.

DR. LITTELL: Objection, your Honor. It was on all extremist organizations, left and right.

THE COURT: Do these come from the files of Dr. Littell?

MR. MAHONEY: They come from the files of Dr. Littell.

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THE COURT: I suppose we will have more testimony about these later?

TR. MAHONEY: I suppose he will. My main purpose is just in the listings of people, your Honor.

THE COURT: Fine.

MR. MAHONEY: If he wants to go into it further, I am certainly not adopting the descriptions in here which are certainly hearsay.

THE COURT: All right.

O If you go over to K --

THE COURT: The whole thing is in evidence. You offered the whole document in evidence.

down here and in view of your Honor's comments about your lack of familiarity with some of this, it seemed to me that this bare list of names might not be very revealing or informative and that if I could have him sample names from these just to give some idea in the nature of the association, it would be helpful.

THE COURT: I am just warning you that as of the state of the record right now J and H are in the record and there is no limit of their use, and that is true of K.

O Turning to K which is the Committee of Summit
Entanglements, there is a listing again of the people

involved. Would you identify some of those people?

A I should have mentioned in the Monroe Doctrine the name of Mr. C. Dickman Williams who is also there.

In K I recognize right away, in addition to those whose names everybody is familiar with, A. C. Watermyer was a senior general and the appointee of Harry Truman as ambassador to China before that situation broke down.

Senator Goldwater is of course well-known. Roger Milliken is the leader of the Republican Party in the State of South Carolina and an industrialist.

Andrews was Eisenhover's head of the Internal Revenue

Service. Frank Poselle is my brother-in-law.

Any other obvious names -- Peer duPont is Peer duPont. J. Brackenly was mayor of Salt Lake City at the time, I think. Ludwig VonMesen is a famour professor-economist who died a year or two ago. Maury Riskin was the recipient of the Pulitzer Prize of "The Icing" which was the name of his musical.

O Mr. Buckley, over the years turning now to the subject of controversies that you have had with Liberty Lobby and Washington Observer, do you have any approximate idea of how many times you have been attacked in one way or another by this organization?

 Λ 30, 40, 50 times.

O Are there any other organizations, for instance, Mr. Courtney and his group in New Orleans, with whom you had controversy?

A He attacked me when I ran for mayor in 1965 and urged his constituency to oppose me.

THE COURT: Who is this?

New Orleans who is head of sort of a right action group out there which I think has folded.

- O What was that controversy about?
 - A I think I had said somewhere that they were kooks.
- O Mr. Buckley, are there any other similar situations involving controversy between you and people in this general political area? If you can recall, American Mercury perhaps.

A I have been attacked a great deal for 10 or 15 years by members of the irresponsible right. I don't remember them all but, as I say, the Liberty Lobby alone has done it at least 30 or 40 times. The John Birch Society has been attacking me for ten years.

Q Wholly aside from picking up items of information which you said you would take from anybody, including the Communist Party, do you communicate through vour colleagues or through National Review analyses or viewpoints that are

1	jqlm Buckley-redirect 230
2	initiated by the irresponsible right?
3	HR. BLASBAND: Objection to the question, your
4	Honor.
5	THE COURT: Overruled. You may answer.
6	Α Νο.
7	O And do you take signals from members of the
8	irresponsible right in your public performance as a
9	commentator and analyst?
10	A No, I don't.
11	MR. BLASBAND: Objection.
12	THE COURT: Overruled.
19	O Mr. Buckley, on this subject and your Honor,
14	would like to have the next exhibit in order marked for
15	identification, please.
16	(Plaintiff's Exhibit 45 marked for
17	identification.)
18	MR. BLASBAND: Do you think it might be possible
19	that when you have new documents that you haven't given us
20	before or told us before that you make copies both for
21	Dr. Littell and myself?
22	MR. MAHONEY: I think these are the last two
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MR. BLASBAND: I also protest that Mr. Mahoney has had adequate notice -- time to notify us as to what document

documents I have and I have no Xerox here.

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MR. MAHONEY: I am going to ask him very briefly just to say what it is and that's all.

THE COURT: He already said it's a column he wrote

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Why don't we reserve and see if there are any objections.

MR. MAHONEY: I offer 45 in evidence.

THE COURT: We will reserve.

Anything else?

which I can read. Two columns he wrote.

MR. MAHONEY: Yes, your Honor.

Mr. Buckley, there has been a discussion of the settlement on Harper or rather with the estate of Fowler Harper. Would you describe the circumstances of that settlement to the Court?

A The circumstances were as follows: Fowler Harper died and between the time the suit was initiated and the time it was called for trial his widow, Mrs. Harper, in the opinion of my counsel, would have been a distracting presence in the courtroom for reasons one needn't belabor.

It had even been suggested that the editorial had jeopardized Professor Harper's tenure at Yale. Dean Rosstyre was prepared to appear as our witness to the effect that this had not been the case.

It was suggested that as a part of the settlement I apologize to Mrs. Harper in National Review. I flatly rejected this proposal and made it perfectly plain that I was not in the least impenitent, that in my judgment what

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had been said in the editorial written by James Burnham, who was an expert on the general subject, was thoroughly reasonable and we were prepared to defend it even before Sullivan versus New York Times.

Mr. Buckly, there was also -THE COURT: When was the settlement with Harper?
THE WITNESS: '66.

Q Did that settlement arise -- did the Harper lawsuit arise out of exactly the same facts as the Pauling lawsuit which you won on motions?

A Correct, the identical editorial.

Q Mr. Buckley, there is also reference to a lawsuit for plagiarism or libel or something that a New Jersey lawyer brought against you. Was there a disposition of that?

THE COURT: He already testified to that.

MR. MAHONEY: There is no testimony as to the disposition.

THE COURT: He said it was dismissed.

MR. MAHONEY: I am sorry.

Q Mr. Buckley --

Yes.

MR. MANIONEY: Your Honor, these are the last exhibits I have. They are responsive to what was put in yesterday that we have not previously seen. These are three

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book reviews concerning "God and Man at Yale."

THE COURT: Let's have them marked and see if there is any objection.

(Plaintiff's Exhibit 46 marked for identification.)

MR. MAHONEY: There is a fourth one here. Thank you.

THE COURT: Did you offer Exhibit 46 for identification?

IR. BLASBAND: Again, I would like --

THE COURT: You offered it, right?

MR. MAHONEY: I do offer it, right.

THE COURT: Any objection?

MR. BLASBAND: I would like an opportunity to read it. This is another document that has not come to my attenat this time.

THE COURT: You are not going to question Mr. Buckley about those criticisms, right?

MR. MAHONEY: I suppose they are in evidence and the Court will -- I am offering them in evidence. I think I would like, your Honor, to question Mr. Buckley very briefly about the general critical reception of "God and Man at Yale." These items would specifically highlight that.

MR. BLASBAND: Your Honor, I would object to that

line of questioning. The book does not concern itself with general critical reception. The book concerns itself with what professors and overseers said about the book.

MR. MAHONEY: I think we are entitled to show this anyway. If Dr. Littell was completely selective in what he said, that would be a matter that the Court ought to note.

THE COURT: We have got a lot of work to do in this case. As I said yesterday, I cut Mr. Blasband short on the "God and Man at Yale" reference and I think that -- I just, and it probably was premature, but in order to do simplifying of yesterday, I said yesterday that that statement in and of itself was libelous. According to the record it was already developed in Mr. Buckley's own testimony.

I really wouldn't -- I think we have got a lot to do without getting into the details of the reception of "God and Man at Yale." I think the other parts of these pages are considerably --

DR. LITTELL: Your Honor --

THE COURT. I think Mr. Blasband is right, general critical reception is irrelevant. I will sustain the objection.

MR. MAHONEY: We are still offering these documents.

The COURT: Let's just take a little tabulation

while we are at it.

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Yesterday -- and I don't want to leave this hanging

-- we were talking at the end of the day about Defendants'

Exhibit W, Defendants' Exhibit X. That was George Bundy's

article about "God and Man at Yale," and Mr. Buckley's reply

article. I received those subject to a motion to strike.

If anybody wants to strike those -- if anybody wants to move,

they better move. They are in.

Today we have this Exhibit 45 and we have got one other --

MR. MAHONEY: 46.

THE COURT: They are being considered over lunch.

MR. MAHONEY: If he can read these through the lunch hour, I would certainly like to reserve on the last two exhibits which are reviews of "God and Man at Yale" on any motion to strike until I see whether he is going to make a motion to strike on the four exhibits.

THE COURT: These are all exhibits.

MR. MAHONEY: They are all together.

THE COURT: All right.

MR. MAHONEY: While we are on the subject of documents, your Honor, we have this group of apologies about which we don't need -- about which we don't require any testimony by Mr. Buckley.

THE COURT: Have you gone over those?

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MR. BLASBAND: I have, your Honor. I have a response. Some of them I would have no objection to and others I do.

MR. MAHONEY: Do you want to do this all at once after lunch?

THE COURT: Sure. There is no questions of Mr. Buckley about those, is there?

MR. MAHONEY: No.

THE COURT: Is there anything more you have of Mr. Buckley?

MR. MAHONEY: Just to put everybody on notice, I have one more thing with Mr. Buckley.

THE COURT: Go ahead.

MR. MAHONEY: Just on the subject of documents I have also brought down a reprint of the Encyclopedia Britannica on VonRibbentropp and I will give them a copy of that.

Q Mr. Buckley, your television program, Firing Line, under whose sponsorship is that program now broadcast?

A It's sponsored by a thing called S.E.C.A. which is the Southern Educational Communications Administration under a grant in the last couple of years from the Ford Foundation.

THE COURT: What are the initials?

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THE WITNESS: S.E.C.A., SECA.

THE COURT: It stands for what?

THE WITNESS: Southern Educational Communications Administration or Agency.

- Q Under a grant by whom?
- A The Ford Foundation.
- Q Who is the president of the Ford Foundation?
- A McGeorge Bundy.

MR. MAHONEY: No further questions.

THE COURT: Mr. Buckley, let me ask you a couple of things about the term fellow traveler.

THE WITNESS: Yes, sir.

THE COURT Isn't it true that -- well, is it true that when the name or when the term fellow traveler first grew up it was normally used in connection with the communists?

THE WITNESS: That's correct.

THE COURT: And do you recall seeing the use of fellow traveler in connection with the fascist before its appearance in this book "Wild Tongues"?

THE WITNESS: Oh, yes, I have seen it before.

THE COURT: So this wasn't a novel idea?

THE WITNESS: No. Even 30 years ago there would be references to fellow travelers of Hitler's foreign policy

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in Europe.

THE COURT: Would you say --

THE WITNESS: It's sort of a generic significance.

THE COURT: When you say generic significance, what do you mean?

THE WITNESS: I mean it was not particularized.

It's useful only about following the communist line. It was also used to follow other lines, the nazi line, the fascist line, but mostly, as you point out, it's been used with communists.

THE COURT: Can you look at 134 of the book.

THE WITNESS: Right.

THE COURT: I wish you could give me as briefly as you can a description of the entities listed under radical right. We can skip the first one, John Birch Society, but I would like to know something about the others. What about the Christian Anti-Communist Crusade, Fred Schwartz?

THE WITNESS: The Christian Anti-Communist Crusade
-- is this a list of publications or just organizations?

The Christian Anti-Communist Crusade is in my judgment in no sense fascist.

THE COURT: Is there any way to characterize what it is, what is purpose or standard is?

THE WITNESS: It has been for eight or ten years

an anti-communist organization that specializes in sort of public teaching sessions. At one point they hired Madison Square Garden and taught an anti-communist school there ever a period of five or six days.

THE COURT: Would you characterize that as a fascist organization?

THE WITNESS: Absolutely not.

THE COURT: I was going to ask you, and I guess I will ask you, if you would characterize it as radical right.

Eadical right isn't as well defined as fascist, is it?

THE WITNESS: No, it's not.

THE COURT: I won't ask you --

THE WITNESS: I would characterize it as hawkish on the communist issue.

THE COURT: Let's use the definition -- you gave us a kind of dual definition of radical right yesterday, do you remember that?

THE WITNESS: I did.

THE COURT: You said -- how is the term radical right normally or mostly understood?

THE WITNESS: It's mostly understood as a way to designate irresponsible, thoughtless, sometimes recist organizations of right wing agitators.

MR. BLASBAND: Your Honor, on these questions are

you asking Mr. Buckley his opinion or someone else's opinion?

THE COURT: I am asking his opinion, obviously.

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MR. BLASBAND: Because his answer seemed to be broader than that. That is that it's understood as. It did not seem to be limited to Mr. Buckley's understanding of it. If that is his testimony, that that is his opinion, that's fine.

THE COURT: I don't know these terms. I have never read their publications. I don't go into this field at all.

MR. BLASBAND: Of course.

THE COURT: I have got to have help in understanding what is in this book. I know that it bothers some of the people in the court to have questions which may be the kind of combination of arguing the case and opinion and fact, but I have got to have help in understanding these terms.

I am glad to have that help from any source. Right now Mr. Buckley is on the stand and I would take, for whatever assistance and whatever weight it deserves, his knowledge and views about what these organizations mean and even what these terms mean. It doesn't mean that somebody else can't call a witness to testify to a completely different understanding and so forth. But I just want to make clear my purpose and that's that.

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MR. BLASBAND: I think you may have misunderstood me or I wasn't making myself clear. I have no problem with the Court asking Mr. Buckley his views, but as long as we understand that he is just giving his views and no one else's views.

MR. MAHONEY: I don't think we understand that.

He is giving his understanding of the public coinage of the word.

THE COURT: If a person is an author and a publisher of a periodical, I assume he has some knowledge even about what is generally thought about these terms.

MR. BLASBAND: I don't think that we have qualified him in that respect as an expert, your Honor. And he never was proffered as an expert.

MR. MAHONEY: I will proffer him right now as an expert on that subject.

THE COURT: Anyway, I take it you are objecting.

If you want to limit my questions, I am not going to accept a limit. I want to see what Mr. Buckley can tell me about these terms, and I say to you that I will weigh it for what I feel it's worth.

If I feel that Mr. Buckley's knowledge is probably limited on the subject and his testimony isn't worth weight, I will give it little weight. If I feel that he is in a

position to know what he is talking about, I will give it weight. But I have to start somewhere. Let's go.

MR. BLASBAND: May I have a standing objection with respect to any of these questions?

THE COURT: You certainly can. Overruled.

The term radical right, you gave us yesterday two definitions.

THE WITNESS: Yes, sir.

THE COURT: One you said --

THE WITNESS: Two uses.

THE COURT: One had the connotation that it had had an opprobrius or pejorative connotation. The other was possible use in terms of radical conservative ideas by somebody who might be a conservative economist and so forth.

THE WITNESS: Yes, sir.

THE COURT: Can you tell me in the way this term is used generally what is the most common usage of that term?

Can you answer that question?

THE WITNESS: Yes, I can. It is much more commonly used in the pejorative sense than in the scholarly sense, if only after all there are more people interested and involved in agitational activity than in scholarly activity.

THE COURT: What I want to know is if you use -- taking radical right for the moment in its pejorative sense,

as you described it yesterday, would you classify the communist -- the Christian Anti-Communist Crusade, Fred Schwartz, as radical right?

THE WITNESS: It has been called that but imprecisely so. For instance, no one knows whether Dr. Schwartz himself is a socialist and yet that would appear to be a mixture of types, to have a socialist run a radical right organization.

But his focus is exclusively or has been for the period I have observed him on issues of anti-communism concerning which, of course, there is a lot of sympathy from the anti-communist left.

THE COURT: You are saying that there are numbers of people who are willing to classify Fred Schwartz in the Christian Anti-Communist Crusade as part of the radical left?

THE COURT: How would you personally classify him?
THE WITNESS: Undiluted anti-communist.

THE COURT: Would you classify that group, Fred Schwartz and his group, as radical right, would you personally classify them that way?

THE WITNESS: I would not.

THE WITNESS: That's right.

THE COURT: Let's do the same thing with the Christian Beacon, Carl McIntire.

THE WITNESS: I have never read the publication, but I have some impression of Carl McIntire and he is a fundamentalist. He is anti-Catholic and economically right wing. I have never met him or seen his publication.

THE COURT: So you are not familiar with Christian Beacon and Carl McIntire?

THE WITNESS: What I said is not incorrect. I am sufficient enough to know that what I said is correct.

THE COURT: Form what you know or have heard, would you classify Christian Beacon and Carl McIntire as fascist?

THE WITNESS: No, I would not.

MR. BLASBAND: Your Honor, was your Honor's question fascist or of the radical right?

THE COURT: Fascist.

Are you able to illuminate me as to whether that entity falls under what we call the radical right?

THE WITNESS: I would say that it is commonly thought of as being the radical right.

THE COURT: When I speak of radical right in these questions, I am excluding the kind of an unusual usage you talked about yesterday that might apply to Professor Friedman and so forth.

How about Christian Crusade, Billy James Hargis?
THE WITNESS: I would stick him in the same

category as Carl McIntire. If he is anti-Catholic, I am not aware of it. I have never seen his publication.

THE COURT: You would say that is not a fascist entity but it is commonly thought of as radical right?

THE WITNESS: That's correct.

THE COURT: The Herald Freedom, Frank A. Capell?

anti-Semitic and I haven't read his publication frequently enough to know whether you can sort of decoct from it any fascist intentions, but he is definitely a member of the radical right and an anti-Semite, to boot. He is utterly unreliable.

THE COURT: How about the Dan Smoot report?

THE WITNESS: That I have seen from time to time. Most of the time it's devoted to exhaustive investigations of individual issues such as pending legislature. It is definitely far right and I think it is possible to say fairly that occasionally it has anti-Semitic inflections.

THE COURT: Well, sticking to these labels, would you call it fascist?

THE WITNESS: No, it was not fascist.

THE COURT: Radical right?

THE WITNESS: Yes. In that area.

THE COURT: How about Human Events?

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THE WITNESS: Human Events is a perfectly respectable right wing Washington newsletter. There is nothing fascist about it at all or radical right.

THE COURT: I think we have talked about Liberty Letter.

THE WITNESS: That I think you could say fairly, at least about the Washington Observer, that it is fascist in tone.

THE COURT: How about Life Line, H. L. Hunt?

THE WITNESS: Life Line I haven't seen more than two or three times, but it's fundamentalist as regards

Christianity and right wing capitalist and neo-isolationist.

THE COURT: Again, trying to apply the labels, would you any that it is fascist?

THE WITNESS: No, it's not fascist.

THE COURT: Would you say that it's radical right?

THE WITNESS: I would reserve judgment, your Honor,
I haven't seen it frequently enough.

THE COURT: How about the Manion Forum, Clarence Manion?

THE WITNESS: He was former dean of the law school at Notre Dame and the Manion Forum consists of transcripts of interviews he conducts with people.

THE COURT: He was former dean of Notre Dame?

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THE WITNESS: Law school. He is also a member of the board of directors of the John Birch Society.

THE COURT: He is?

THE WITNESS: He is. He has declined to resign for complicated reasons, but he has never himself uttered any of the lunacies that are characteristic in the John Birch Society and in any event the Manion Forum, as I say, is merely a transcript of his interviews of public figures, and they celebrated their 1,000th interview a few weeks ago.

THE COURT: What kind of public figure is he?

THE WITNESS: Right oriented but probably they have had 100 congressmen, 20 or 30 senators, 20 governors, that kind of thing. I have been on there once or twice.

THE COURT: How about Arlan Target?

THE WITNESS: I never heard of it but or course I heard of the Minute Men and they are sort of ideological desperado types. Its leader went to jail a while ago for having too many weapons or dynamite or something. I wasn't aware they had a publication.

THE COURT: Their main feature is the carrying of arms, armin; themselves?

THE WITNESS: Sort of preparing for when we all have to shoot people.

THE COURT: Is it possible to apply the terms

fascist and radical right?

THE WITNESS: . I think it is.

THE COURT: My question wasn't a good one. Would you apply the term fascist to it?

I am reluctant to apply the word fascist unless I see some sort of a program that involves taking over the states, legislature, judiciary and so on. But I would say fascistic would be fair.

THE COURT: The last one is The Wanderer.

able orthodox right wing Catholic weekly. It's ultramontanist. Hugely loyal to the Pope. It's conservative in the Barry Goldwater sense, not any more than that, very much opposed to abortion, that kind of thing.

THE COURT: Could you look at page 60 of the book.

THE WITNESS: The passage you read this morning?

THE COURT: Right.

I think my question relates to -- the passage is
this "So too with the term radical right the phrase is
preferred by some writers who do not want to apply the
precise rubric which is fascism." I think my question is
do you agree with what I read into this, that radical right
is the equivalent of fascism or do you believe that there is

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THE WITNESS: I believe there is a distinction.

THE COURT: In common parlance is there a distinction?

THE WITNESS: Yes, sir. An example I think, your Honor, would be the distinction between let's say the Ku Klux Klan and the White Citizens Council.

THE COURT: Explain that.

THE WITNESS: The Ku Klux Klan is capable of a very direct violation of people's rights, capable of terrorism, violence, brutality, for a while did control certain legislatures in the South.

The Citizens Council has argued, in effect to repeal Brown versus Board of Education by bleeding various constitutional doctrines of interposition and so on and so forth. But they have not come out for the use of violence.

There is nothing hooded, no attempt to suborn the legislatur

So that would be, I think, an example of two organizations in the same part of the country with the same objectives or rather harmonious objectives about one of which you could say it was fascist, about the other that it was radical right.

of what we have gone over, but aside from that example can

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you explain the distinction that you believe is drawn between radical right and fascist

THE WITNESS: Again, apart from academic positions?

THE COURT: Answer any way that you think is appropriate.

THE WITNESS: That which is fascist depends on the achievement of its objectives by the use of force, deception, all the techniques associated with coming to power with Mussolini and with its maintenance in power by controlling the apparatus of the state, the whole of it, as I say, the executive, the legislative and the judiciary.

The radical right is thought of as a conjurese of highly dissatisfied Americans who are to be distinguished largely by the irresponsibility of their utterances but who are not in fact engaged in any efforts to take over the state or to assert themselves by the use of brutal power.

For instance, I know nowhere that the John Birch Society in any I have seen has urged anybody to violate the law.

THE COURT: So you classify the John Birch Society radical right but not fascist?

THE WITNESS: Right. But primarily characterized by that lunatic vision of its founder, having to do with the conspiracy.

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jq1m Buckley MR. MAHONEY: I have nothing further of this witness, your Honor. THE COURT: You may step down. (Witness excused.)

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2	Company.
3	THE COURT: What is Judge Weinfeld's citation?
4	MR. BLASBAND: I don't have it here. You can
5	find it it is referred to in the Circuit Court of
6	Appeals opinion.
7	THE COURT: You don't have any objection to
8	my reading that?
9	MR. BLASBAND: No, your Honor, I know you read
10	a lot of law.
11	THE COURT: We will defer on that.
12	MR. MAHONEY: You will defer on this?
13	THE COURT: Yes.
14	MR. MAHONEY: We marked 49 for identification
15	which I won't offer now. I will give that to Mr. Blasband
16	and Dr. Littell to read.
17	If we can change the order of witnesses, we have
18	been a while getting to the witnesses and because of
19	the schedule of witnesses I would like to call Mr. Lowenstein
20	first.
21	MR. BLASBAND: I repeat my objection as to the
22	expert witnesses.
23	THE COURT: Overruled.
24	
25	ALLARD LOWENSTEIN, called as a witness.

Lowenstein-direct

2	having been duly sworn, testified as follows:
3	DIRECT EXAMINATION
4	BY MR. MAHONEY:
5	Q Mr. Lowenstein, where did you go to college?
6	A University of North Carolina.
7	Q Did you ever attend Yale?
8	A Yes.
9	Q What degree did you get from Yale?
10	A Law degree.
11	Q Were you at Yale at the time Mr. Buckley was?
12	A We overlapped.
13	Q Did you know him personally at that time?
14	A Vaguely.
15	Q Mr. Lowenstein, will you briefly recite what
16	your career has been since you graduated from law school?
17	A Well, I have been involved in public activities
18	for a while.
19	THE COURT: When did you get out of law school?
20	THE WITNESS: 1954.
21	THE COURT: Go ahead.
22	THE WITNESS: I have taught and been in Congress
23	and I wrote a book that MacMillan once published.
24	Q Pardon?
25	A It occurred to me just now that I once wrote a book

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Does Americans for Democratic Action have a viewpoint about political matters?

It is regarded as liberal.

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Could you name some of the other people who have been chairman or presidents of Americans for Democratic Action over the years?

The honorary chairman until her death was Mrs. Franklin D. Roosevelt and the chairmen have been people--I was going to say people like, I don't think they would appreciate being described that way, John Kenneth Galbraith, Hubert Humphrey, Francis Biddle, Congressman Fraser of Minnesota, and so on.

THE COURT: Might at some point it be useful to have dates? When were you in Congress?

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THE WITNESS: 1969 to 1971. I was chairman of ADA from 1971 to 193. It is a two-year period and it may be '71 to '72 which would be more accurate but it is those two years.

THE COURT: What have your dates been on the Democratic National Committee?

THE WITNESS: I was elected to that in 1972 and it is a four-year term so I am still on it.

Q Did you play a role, Mr. Lowenstein, in the 1968 presidential election?

A I was involved in the campaign of Senator McCarthy.

Q Mr. Lowenstein, could you describe your own personal political viewpoint? Or how it is generally regard

A Well, I have always been uncomfortable about label and I am still unsure that simplistic labels tell very much but in the House of Representatives I was involved in the Democratic study group which is considered the more liberal wing of the Democratic major ty in the House of Representational I certainly have been under attack for a long time as a liberal or whatever that range of political attitudes is called by those who attack people they regard as liberals.

Q Would it be fair to say that you have been engaged in public controversy at one time or another most of the

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I don't even see its relevance.

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THE COURT: Overruled. Go ahead and answer it.

THE WITNESS: Yes. I don't mean to be abrupt in the answer. The point is it would be difficult to be involved in public affairs during that period and not be aware of Mr. Buckley's reputation because he was involved in public affairs during that period.

Q Would you describe that reputation to the court as you know it?

A It was a celebrated reputation. I think he is regarded generally as one of the most effective spokesmen for his points of view and one of the most difficult adversaries for those who don't agree with that point of view I believe it is fair to say that most people who disagree with his point of view would regard him as a valued and effective adversary in the sense that one always has a clear sense of where he stands and a respect for the fact that that position is a sincerely felt position, whatever its merits comes out of conviction and unusual mental capacit

Q Could Mr. Buckley's reputation at this time fairly be described as radical rightist or fascist?

> THE COURT: What time are you talking? MR. MAHONEY: From 1954 to 1968, your Honor.

As radical rightist or fascist?

Buckley directly prints news items and interpretations picked

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

up from the openly fascist journals?

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A No, I think that is outrageous because I don't know what the openly fascist journals are that he is suppose to pick things up from. I never heard that allegation made and I would myself feel that what -- I read his column and I find much in it that I disagree with but I have found it to be a clearly independent statement of a viewpoint that is within the spectrum of democratic alternatives, small d democratic alternatives in the United States. I have never found things in it -- in fact, I found at times that it was a useful fact of political life that somebody who had influence in the conservative community had opposed what I think would be more accurately described as fascist viewpoints by which I mean viewpoints that are similar to those that predominated in Germany and Italy at the time of Hitler and Mussolini.

Q Have you heard responsible people say that Nation Review and the newspaper column on the right have been important and useful agencies for radical right attacks on honest liberals and conservatives?

MR. BLASBAND: Your Honor, I think I have to object to this line of questioning now. As I understand it the witness, over my opposition, is testifying as to reputation. He has given his testimony as to reputation and

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now we are being asked about what so-called responsible people have or have not said about Mr. Buckley. Mr. Mahoney will probably go down the whole book to see whether responsible people have said about him. I don't see where it is going to help us at all.

MR. MAHONEY: We have here the question, your Honor. not only of libel but we have the question of what was Mr. Buckley's reputation at the time that this was said. Obviously if Mr. Buckley had a reputation, if it was current about him from the period 1954 to 1968 that he was this sort of person and this sort of journalist and controversialist if that would be clearly relevant to New York Times v. Sullivan. If on the other hand somebody who is inquiring into Mr. Buckley's career could find no support for this among responsible people that also would be clearly germane to the New York Times v. Sullivan issue and I think we have established that both Mr. Lowenstein and Mr. Buckley were engaged in the ongoing public controversy as the main occupation of their respective careers during this period.

THE COURT: I don't want to split hairs but I think the testimony about his reputation is relevant. I think there is a difference between that kind of testimony and asking if he has ever heard the allegation that Mr. Buckley's column picks up materials from openly fascist

journals.

MR. MAHONEY: I can paraphrase this slightly. I think it will be less helpful to the court for me to say, for example, did Mr. Buckley have a reputation as being a conduit for fascist opinions then it would be exactly as Mr. Littell has said it.

THE COURT: That is a different question. You have this in a criminal case. Reputation is different from whether you heard this one or that one say something. Reputation has a meaning. If this witness knows about his reputation on any points relevant to these passages he can give it. That has a meaning.

MR. MAHONEY: All right, your Honor.

MR. BLASBAND: If I may, your Honor, it seems to me that the issue of reputation is only relevant, if at all, on the question of damages in this case. If it is supposed to be offered on the question of wruth I think it is completely inadmissible.

MR. MAHONEY: It is relevant to the question of damages and --

THE COURT: I think it is relevant for at least damages and possibly on the question of whether there was a libel. I don't think you can examine the question of libel in a vacuum. You have to know something about the person

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	1	jqh 52 Lowenstein-direct
	2	A No.
	3	Q Did Mr. Buckley have a reputation for misquotati
	4	either in his magazine or in his column for indulging in
	5	misquotations?
	6	A No.
	7	MR. LITTELL: Objection.
	8	THE COURT: Overruled.
44	9	Q Did Mr. Buckley have a reputation for repeating
	10	radical right malice and rumor in his columns and in his
	11	magazine?
	12	A No.
	13	Q Did Mr. Buckley have a reputation for never
	14	admitting a mistake or apologizing to people in the event
	15	that there was a mistake or an apology that was warranted?
	16	A No. Most people I think who write
	17	MR. BLASBAND: Objection.
	18	THE COURT: Yes.
	19	MR, BLASBAND: It is a yes or no question.
	20	WITNESS: No.
	21	Q Did Mr. Buckley have a reputation for lying
	22	about people in his columns or his magazine?
	23	A No.
	24	Q Did Mr. Buckley have a reputation for engaging
	25	in personal vendettas against people in his magazine or in
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Lowenstein-direct

his columns?

No.

Did Mr. Buckley have a reputation for lacking respect for the rules of dialogue in American public life? MR. BLASBAND: Objection.

THE COURT: Sustained.

Mr. Lowenstein, are you familiar with Mr. Buckley's television program Firing Line?

A Yes.

Have you ever appeared on it?

A Yes.

If Mr. Buckley had a reputation of the type that I have described in my last five or six questions would you have consented to appear on his program which he hosts?

MR. BLASBAND: Objection.

THE COURT: Overruled.

MR. BLASBAND: It is a completely hypothetical question. It won't allow the court to go anywhere on this. Either he was damaged or not. If they have proof of damages let them bring it in. It is entirely improper to bring this in on hypothetical questions where there is no basis. for injuries.

THE COURT: They have conceded they have no special

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damages but the question is whether the type of statements here would tend -- and we went over this yesterday -- through the definition in the state case, I don't think that definition is contradicted by you. You have to judge whether the statement would tend to cast the plaintiff into disrepute and so forth. The important word is tend. Aga: you have to give the content. I can't look at these things in a vacuum and I won't get much help on that really no matter what we do. So I will grasp at a few straws and if somebody can illumuniate the situation by saying what they would or would not do and if these things were true then it will help and I will accept it. Okay.

(Question read.)

A If a program was hosted by a person with that reputation I would appear to. I have never believed in not appearing on programs because I don't like the viewpoint of people who are running it. I would have appeared.

MR. BLASBAND: Objection withdrawn, your Honor.

THE COURT: Okay.

MR. MAHONEY: No further questions, your Honor.

THE COURT: Has Mr. Buckley's reputation changed over the years? This is probably very hard and maybe you can't answer it at all. But we are dealing with a book that was published in 1969. I guess Mr. Buckley's publications

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started back in '51 or so with God and Man at Yale.

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Would you be able to tell me whether Mr. Buckley's reputation has changed over the years and, if so, in what way? Can you answer that at all?

THE WITNESS: Well, yes, your Honor. I have to ask you a question first. Since 1968 I have been engaged in specific adversary situations with Mr. Buckley which make my reactions to him much more dependent on my personal experiences. Before that the information I have been asked to give has been about a general reputation which I can give from what I knew of him as a public figure. Since 1968 I have had much more extensive experience dealing with him as an adversary person in specific situations. I need to know what kind of situation you want me to give.

THE COURT: I don't know how to differentiate but it may be of some significance for me to try to visualize what the situation was in 1969. Maybe Mr. Buckley has a certain reputation now. Maybe it was somewhat different then and the impact of this book might be a little different then than it would be now. I am really interested in Mr. Buckley's -- to some extent -- reputation in '69 and perhaps primarily. I know you have answered questions about his reputation from '54 to '68. Could you tell me if Mr. Buckley's reputation around the year '68 and '69 was different

Lowenstein-direct

from what it is now in the sense of his political -- where he fits in on the political spectrum, his responsibility or irresponsibility, that kind of thing?

THE WITNESS: Well, you help me to answer you because I want to answer only what you are asking and that is a very large question. His influence, I think it is fair to say, has continued to grow over the years. What that has meant in part has been that there has been a great deal more scrutiny and attention paid to what he has done in the last six years than say 15 years ago. In that sense I think you are right that the impressions of him and the dimensions of his work are not the same as they were 15 years ago.

any appreciable difference in his reputation now in any way as far as where he fits in in the political picture, political philosophy or how much respect and so forth he is accorded?

Was there any appreciable difference between the situation now and what it was in 1969?

THE WITNESS: Oh, the question is that counsel has asked me, no.

THE COURT: I am asking you maybe a little different question.

THE WITNESS: Let me sort it if I may. It helps

me clarify what is a very shrewd and difficult question to answer simply.

On the particulars that counsel was asking about his reputation in '68 or '69 that set of impressions about him remains the same. I don't think anyone changes now from where they were then on those questions. On other aspects, for instance his point of view on questions, I think there is a sense that his point of view on questions has perhaps broadened and deepened and perhaps become more complicated and less simplistic. I think there are changes in that, But I am not sure that they relate to the question that you are asking me if it is connected to the questions counsel asked. Is that a fair guide in my confusion about how to answer the question?

THE COURT: The book comes out in 1969. If a person is a relative beginner in the field of writing newspaper columns and so forth -- I know that wasn't true of Mr.

Buckley but I want to illustrate my problem -- if a person were a relative beginner, a book which is allegedly libelous might have one impact on him, it might have a different impact if he were a very well established person. That is the kind of thing that I am groping with. You come on this witness stand as having some knowledge of his reputation

over the years and I would like to ask you if you can tell me

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and maybe the end result is you can't tell me anyway, but can you tell me anything about your understanding as to how well Mr. Buckley was established in '69 veruss now, how well or little he was respected in '69 versus now, that kind of thing. Do you understand my question?

THE WITNESS: Yes, your Honor.

THE COURT: Maybe you can't picture what it was in '69. Maybe you have never focused on that problem.

Maybe you can't help me but if you can, go ahead.

I would say that in part because of political events externate to him, including the change in the presidency and whatnot, his influence increased after '69 and then in a kind of cyclative as his influence increased he had more exposure which in turn added to his influence. So that I think there has been -- I think he has gone from being one of a number of major figures to being in some parts of the political dialogue today a preeminent figure and I don't know that you could have called him that at the period that we are talking about.

THE COURT: We are talking about the period meaning 169?

THE WITNESS: '68. I think there was escalation of his influence as well as of his visibility. In other words

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significant a part of the political spectrum since 1969.

I think they came together. I think he became increasingly

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But I think --THE COURT: Was '69 a year of departure in some

THE WITNESS: Only in that that question I was asked dated from that period.

THE COURT: I am talking about Mr. Buckley's career and your understanding of his career and his standing. Was '69 a year of departure or was just this a continuing and '69 means no more than any other year?

THE WITNESS: I think there have been plateaus. I think there was a period when he was continuing to gain influence out of his own perhaps talents. But I think with the access of the Nixon administration there was an increase in the power of the political point of view of which he was a part. That meant there was another plateau of influence. His influence--

THE COURT: Commencing in '69?

THE WITNESS: Yes, sir. You are asking questions, as I say, that I haven't pondered but my sense of it would be that it would be fair to say that his influence has gone in that fashion at different points. It has escalated mo re swiftly than other points and '69 would be one of the

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Lowenstein-direct

times when I think certainly the beginning of his television show would be another.

THE COURT: Okay.

THE WITNESS: There have been these increases and lurches as well as the continuing as between the lurches.

THE COURT: Do you have any cross?

MR. BLASBAND: I do, your Konor.

CROSS EXAMINATION

BY MR. BLASBAND:

Q Mr. Lowenstein, I know you mentioned that you have trouble with labels. I had a little trouble with one word and maybe you had the same trouble with it after reflection, that is the word responsible. You mentioned that responsible people would think of him as having this type of reputation or not having this type of reputation I make those judgments too and I consider that anyone who agrees with me is responsible.

Do you make the same judgment?

Well, I don't agree with Mr. Buckley but I think he is responsible. I would not want to limit the word responsible to people who agree with me. It is a fair question if I can word it slightly differently. Do I think that anyone that said that Mr. Buckley was all this other material, by saying that, irresponsible --

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A I would say that those statements, I believe to be irresponsible. While I would not want to say categorically that anyone who used those statements was irresponsible, I think those statements as statements are irresponsible.

That's right.

MR. BLASBAND: I move to strike the witness: testimony, your Honor. It is not responsive to the question.

MR. MAHONEY: I think it is responsive, your Honor. Perhaps it is not the response he wanted but it is responsive to the question.

THE COURT: You are really asking for a definition of irresponsible.

MR. BLASBAND: I asked him whether the people that he placed in the category of being responsible, that is those people who would think that Mr. Buckley had a certain reputation or think he did not have--

THE COURT: We are not going back to this. This is not the trier of the case. I know that and his judgment on the question of libel, he is not going to decide the case. I know that and it certainly would not be helpful whether we restrict his answer or not. Part of his answer was responsive so let's go on.

Q You answered the question in terms of those people

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you thought were responsible would have a certain view of Mr. Buckley's reputation. Is it possible that people would have another view of his reputation, responsible or not?

- A Certainly.
- Q Have you heard such other views?

A Well, I certainly have. This is another view here. What you are asking me are there other views, I think there are, sure.

- Q What other views have you heard of Mr. Buckley?
- A Well, one can go on and on. He is controversial and anyone who is controversial you will hear different views about. To list them I am a raid might seem dilatory because there are people whom I have known who are what I would think of as further right than Mr. Buckley who regardism as dangerously left. I have heard that charge made. I have heard so many descriptions of his political position depending on the point from which the person views him.
- Q Have you heard points of view in which his reputation would be that of further right than you have described him?
 - A Yes.
 - Q How far right?
 - A If you include what I read here today, obviously

 fascist. That is in the book. What I thought I was asked before was my sense of the reputation that he has as compared to the description here.

Q I want to know what people you have spoken to have said about him. Are there people that you have spoken to that have said that for example -- and I am not necessarily

saying this and Mr. Buckley knows it -- but have you heard

there are some people who think he is a fellow traveler

people say that he is a fellow traveler of the right?

A Fellow traveler of the right?

Q That is right.

A Of the right, yes, If the description is fellow traveler of the right, I don't know that that exact phrase would be used but certainly the sense that he is part of the right is a general sense. And I suppose that one can say fellow traveler of the right would be perhaps a cute way of saying that he moves along with the right which I expect is general impression.

THE COURT: Let's take a break.

(Recess.)

MR. BLASBAND: Shall I continue, your Honor? THE COURT: Yes.

Q Before the recess we were discussing varying reputations that Mr. Buckley may or may not have and

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be confined that way, your Honor.

MR. MAHONEY: I don't think the witness should

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THE COURT: Just be as responsive as you can. You . go ahead and answer the question.

THE WITNESS: All I want to say is about any public figure you can hear anything said by somebody and to say yes is a misleading answer because I am sure somebody at some time has said that to me. But if you are asking me what is the reputation then I answered that question before and it would be misleading to say that the reputation is he aids the radical right because if by radical right which is a term I am not sure I understand is anything beyond the spectrum of political positions in this country then the answer has to be no that that is not his reputation.

Without regard to what radical right means, has anyone said to you that they believe that Mr. Buckley aids the radical right?

MR. MAHONEY: He just answered that question, your Honor.

THE COURT: I think he has.

You go ahead and answer again,

Do you recall someone ever saying to you Mr. Buckley aids the radical right?

THE WITNESS: I am sure someone has said something like that to me at some point. I can't name who but I can't believe that over the course of the years that comment

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1 jgh 66 Lowenstein-cross 2 has not been made by somebody in my hearing. 3 Am I correct that you disagree with that 4 characterization? 5 A Yes. 6 Q Did you ever read this book in its entirety? 7 A No. 8 When were you called with respect to possibly 9 becoming a witness in this lawsuit? 10 MR. MAHONEY: Your Honor, is this relevant? 11 THE COURT: Sure. 12 THE WITNESS: It's been some time back. At the tir 13 I was first asked I think the trial was then continued. 14 I am not sure what happened but I know there was a delay 15 between the first time I was asked and the time when I 16 finally saw -- the time the trial was set. 17 MR. BLASBAND: That is about four months ago, you 18 Honor. I think there is a great deal of substance to 19 my remarks about that we should have been told the name 20 of this witness. 21 THE COURT: Let's not reargue that. 22 Q Were you asked to read the book? 23 No. A 24 Were you told about the issues of the case? Q 25 I read the parts of the book that involved the

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jqh 67 Lowenstein-cross 1 2 plaintiff. 3 THE COURT: Were you told about the issues of the case? 4 5 THE WITNESS: In a general way. I knew it was a 6 libel suit. Q At that time had you ever heard of Dr. Littell, 8 the co-defendant? 9 A No. 10 Q So you know of nothing about his reputation, 11 is that true? 12 I knew nothing of it then. When I was first told 13 about the suit, that is. 14 Were you told something about his reputation 15 since that time? 16 A Yes. 17 Q Who told you this? 18 I think counsel for the plaintiff. A 19 Q Can you tell us what that reputation is? 20 MR. MAHONEY: If he is asking what I told him 21 and he is consulting me as counsel I don't see where that 22 is proper. 23 MR. BLASBAND: I didn't know you had a client 24 on the witness stand, Mr. Mahoney.

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THE COURT: Wait a minute.

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Lowenstein-cross

MR. MAHONEY: I am talking about preparation

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for trial.

THE COURT: We are talking about communications between a witness and a lawyer and they are always admissible. But I am really puzzled about this one. You are asking what Dr. Littell's reputation is on the basis of what Mr. Mahoney told him.

MR. BLASBAND: Yes. I guess what I am asking is what did Mr. Mahoney tell you about Dr. Littell?

MR. MAHONEY: Objection, your Honor.

THE COURT: Sustained. I don't see where that is relevant.

MR. BLASBAND: It could well help our case as far as the reputation of Dr. Littell.

MR. MAHONEY: I didn't know that was an issue.

MR. BLASBAND: In the New York Times it is, sir.

THE COURT: I think the knowledge of MacMillan, what they believe or knew about Dr. Littell certainly is relevant. That is one question you explored with Mr. Alexander but what Mr. Mahoney now tells to this witness really I don't think is relevant.

MR. BLASBAND: All right, your Honor, I will stay away from that.

Q Does the John Birch. Society have a reputation of

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Subject to the problem of labels that I mentioned the answer to that question would have to be that if anything

does, that does.

being on the radical right?

Q Does it also have the reputation of being fascistic?

A It certainly has a reputation that would make it more proper to say that about the John Birch Society than most other right wing organizations but I would myself again hesitate to label the John Birch Society as fascist simply on the basis of a generalized statement like that. I am uncomfortable with that.

You will agree that these labels, fascistic, radical right, totaltarian, they are difficult labels?

They are difficult. They apply much more to the John Birch Society in the general parlance than they would to most other right wing organizations.

Don't those labels have different meanings among the public?

For me the word fascist is precise enough that it makes me uncomfortable to use it without great care.

I understand that. I was just asking you whether these labels fascistic, radical right, totaltarian, dor't they have different meanings among different peoples?

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A As a general rule, of course these labels have different meanings but I must insist if you want my view accurately that fascist or proto-fascist, anything using fascist or Nazi seems to me to have to it more than idealogical slants, also slants connected to the recent difficulties in the second World War and racial activities of Hitler and Muss clini. I think it has a flavor to it which is so specific that I find myself particularly sensitized to that type of word being used unfairly.

Q How about the word fellow traveler, does that have different meanings among different people?

A Yes, fellow travel is one of the most sloppy used phrases in the political spectrum.

Q I am not going to take too much more of your time. We were going down this list of organizations in the book Wild Tongues and perhaps it might be helpful if we could get your views in these various organizations starting at page 134. Would you consider the American Opinion radical right?

A I would be misleading you to pretend to be an authority on right wing publications in detail a so what one fits in what category even in general parlance because I am not a consummate student of the right wing in the American political scene.

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Lowenstein-cross

Q I don't want to say anything that you don't know about. If you do know anything about these things about the reputation or what you considered them please tell us if you don't we will quite understand.

Do you know anything about American Opinion that could be helpful?

A I know it is the organ of the John Birch Society and as such what I said before about the John Birch Society probably applies to it but I am not a reader of it and I am simply to judge it by association.

Q How about the Christian Anti-Communist Crusade, do you know anything about that?

A I know that it has the aura of what extremism on the right generally portends. There is something about the questions that trouble me though because I don't read the Christian Anti-Communist per se. If you wanted my notion of the reputation I have heard about it, my view of its reputation is close to the description in the caption.

- Q Radical right?
- A Yes.
- Q I see.

How about Fred Schwartz, do you know anything about his reputation?

A It is the same reputation as the publication, I think

he edits it or publishes. Whatever his relation is, I know his name in relation to the Christian Anti-Communist Crusade to which there has been over the years a flavor 4 fairly or otherwise of anti-semitic activity added. In other words, there is that aspect which may be totally 6 7 unfair and I have never read it and I would not want to 8 judge it in any way at all. I must say one of the things 9 I am clearest about is the activities of a great variety of groups about which I don't know anything in personal wa do not change my concern over what I do know and that is what I am here to testify about.

Q It may be helpful for you to tell what you know of their reputation. That might be quite helpful.

How about this Christian Beacon? The Carl McIr publication.

A I really think I can add almost nothing to the g sense I convey to you that one has a general blurred feein about publicatications one does not read.

MR. MAHONEY: I would like to object as to what the witness is going to testify as a general blurred view and he is not competent to give the kind of testimony Mr. Blasband is asking for.

THE COURT: I don't know how this helps.

MR. BLASBAND: Your Honor --

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THE COURT: General blurred view.

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MR. BLASBAND: It may add a little to the concept of reputation of whether these organizations or publications

are thought of as the radical right as listed in Dr. Littell's view.

THE COURT: A general blur ed view. That is all he said. He really has admitted he knows nothing except this kind of a general view. That has nothing to do with this.

Let me ask you this: Do you have anything more than a general blurred view on the Minute Men? What is their reputation?

MR. MAHONEY: You can answer the first question whether he has more than a general blurred view, if he does not we object to the second question.

THE WITNESS: The reputation is that they have radical right, as you are using the phrase in this book, orientation.

Do you have anything more than a general blurred view of human events?

No.

How about the Liberty Letter? Q

A No.

The Dan Smoot Report? Q

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Jah 74 Lowenstein-cross 2 No. 3 How about Billy James Hargis? A On each of these the answer has to be the same, that I have a general blurred sense that their positions 5 6 are on the radical right but I have said before I am uncomfortable with labels and I am not particularly specifical familiar with each of these individual publications or 9 individual men. 10 Q Let's talk about your testimony concerning Mr. 11 Buckley's reputation. How many people have you spoken to 12 about Mr. Buckley's reputation? 13 A Countless. 14 MR. BLASBAND: I can't talk to two people at the 15 same time, I am sorry. 16 THE WITNESS: For one thing, Mr. Buckley is so 17 much better known than these other individuals that you 18 are talking about that he is a topic of general discussion 19 whereas most of these other people are not. 20 Q You have written a book, correct? 21 A Right. 22 Q MacMillan was the publisher? 23 A Right. 24 When was that published, by the way? Q 25 I think 1962, give or take a year.

1	Jqh 75 Lowenstein-cross
2	Q Why did you select MacMillan as the publisher?
3	A They asked me to write the book.
4	Q Were you pleased to have MacMillan publish your
5	book?
6	A Yes.
7	Q Have you ever heard it said of Mr. Buckley
8	that he has misquoted people?
9	A Have I ever heard it said of Mr. Buckley that
0	he misquoted people?
1	Q Yes, sir.
2	MR. BLASBAND: Your Honor, I can't hear
3	MR. MAHONEY: I think the question is general
4	reputation. That is exactly the kind of question you would
5	not allow when I was examining the witness.
6	THE COURT: I am in a little dilemma. I am not
7	thoroughly conversant with the rules of evidence on this
8	reputation point. I can look it up. But I think that on
9	direct examination you are asking I would think that
0	evidence about reputation is admissible and I so held.
1	Now on cross-examination, that is a little different. He
2	has a right to probe and take it little by little and I
3	will allow him to cross-examine about the specifics because
4	it is cross-examination.

MR, BLASBAND: Your Honor, I am having trouble

Lowenstein-cross

asking the question and listening to Mr. Williams at the same time.

THE COURT: We /e got a funny arrangement in the courtroom, but I than they might interfere with Mr. Blasband. I am trying to communicate with your lawyer, Mr. Buckley and Mr. Williams, let's avoid that.

Go ahead.

Q Have you ever heard it said that Mr. Buckley misquotes people?

A I am sure I have heard it said at some point that Mr. Buckley mirquotes people. I am sure someone has said that, yes.

Q Have you ever heard it said that Mr. Buckley distorts people's views?

A Clearly I have heard it said because I have just seen it in this book.

Q Aside from this, Mr. Lowenstein, aside from this book. You have known Mr. Buckley for a long time, haven't you?

A I am sure I have heard it said by somebody if that is the question, that Mr. Buckley distorts. I am sure I have heard it said truthfully that I distort. I can't think about anyone who says things about someone who does not say they distort.

1	jqh 77 Lowenstein-cross
2	Q That is not an uncommon accusation among people
3	in public life, isn't that correct?
4	A That is correct.
5	Q Isn't it also correct that that is to be expected
6	by people in public life?
7	A That someone will say it?
.8	Q Yes.
9	A Yes, sir.
10	MR. BLASEAND: No further questions.
11	THE COURT: Dr. Littell.
12	CROSS-EXAMINATION
13	BY MR. LITTELL:
14	Q Mr. Lowenstein, are you acquainted with the
15	Anti-Defamation League?
16	A Yes.
17	Q Are you acquainted with Arnold Forster and
18	Benjamin Epstein?
19	A Yes, sir.
20	Q And in their published opinions Buckley is one
21	of the leading fellow travelers of the American radical right
22	1964. Do you consider that an irresponsible statement?
23	A Yes.
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25	MR. MAHONEY: Objection, that is not in evidence.
	THE COURT: I didn't hear the question.

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1	jqh 78 Lowenstein-cross
2	(Question read.)
3	MR. MAHONEY: I withdraw the objection, your
4	Honor.
5	Q The answer was yes, you do.
6	A Yes.
7	Q Are you acquainted with the Institute for
8	American Democracy?
9	A No.
10	Q Are you acquainted with Francis Biddle?
11	A Yes.
12	Q He helped to set it up in 1966.
13	THE COURT: Dr. Littell, please don't testify. If
14	you have questions for this witness, ask them.
15	MR. LITTELL: Excuse me, sir.
16	Q When the National Review accompanied an attack
17	on me as a liberal minister by, I take it to be, a criticism
18	in National Review, in quoting the Church League of Americ
19	I find the conclusion that the thing is a fraud. The ISAD
20	is a New York group. The IDS received its report in 1966
21	in the Anti-Defamation League. Do you consider this a
22	responsible statement?
23	MR. MAHONEY: Can we ask him what he is reading
24	from.
25	Q The question is do you consider that a responsib

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question?

MR. MAHONEY: I have an objection until we know what he is reading from.

THE COURT: What are you reading?

MR. LITTELL: I am reading from materials put in evidence a month ago.

MR. MAHONEY: He is reading from materials marked for identification.

THE COURT: Is this the Movember, 1968, editorial for the Institute of America De ocracy?

MR. LITTELL: It is the November, 1968, editorial, yes.

MR. MAHONEY: He is reading from some notes he has taken from the editorial, Plaintiff's Exhibit 19. If he wants to quote this I request that he be required to read from what is in evidence rather than in his notes.

THE COURT: We can have a lot of confusion if we have paraphrases. If you want to ask this witness a question about something, an article, let's just read the passage or show him the article but not have a paraphrase because we get into trouble.

MR. LITTELL: Should I ask the court for the document entered or do I find it some place else?

E COURT: We will get you the document.

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MR. LITTELL: It is the document Mr. Buckley identified earlier today and corrected me on the date.

THE COURT: Defendants' Exhibit AA, where is that MR. MAHONEY: That is it, your Honor, Defendants' Exhibit AA.

THE COURT: Where is it?

MR. MAHONEY: With the court's indulgence, I don't know what happened to Defendants' Exhibit AA, but this is the same document.

THE COURT: Show that to Dr. Littell. What is your question, Dr. Littell?

Q My question is whether --

THE COURT: You quote to Mr. Lowenstein what the statement is you are going to ask him about and then ask the question.

MR. LITTELL: We have identified the document.
This is in reference to me and to the--

THE COURT: Please just ask quote and then ask the question. Quote whatever portion.

The IDA received its support in 1966 from the Anti-Defamation League.

MR. MAHONEY: He is not reading from the document, your Honor. He is reading snatches and paraphrases but he

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is not reading from the document.

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THE COURT: We are not getting anywhere. Why don't you show him the article and let him read it which probably won't take him a minute and you ask your question.

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MR. LITTELL: I was picking the salient points from this section right here.

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THE COURT: It starts I think in the right-hand column.

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(Pause)

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THE COURT: Have you read this?

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THE WITNESS: Yes, My problem is I know nothing about the organization and I can't possibly comment intelligently about whether a comment on an organization I don't know anything about is responsible or not.

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THE COURT: All right, that is the answer. Next

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question.

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MR. LITTELL: Your Honor, my next question depends upon the question I just asked.

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THE COURT: What is it so verybody can hear it?

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MR. LITTELL: Earlier in the procedures the question

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came up whether I could in excerpting my notes use my journal which I have kept since I was 15 years old in which

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there are quotations taken from books, articles, newspaper

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items and so forth with the pages and dates and the usual thing

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you use in a footnote. The question is can I ask certain questions based on those notes?

MR. MAHONEY: Might I suggest that we just do this question by question. In the last occasion he wanted to refer to a journal which was an excerpt from a document that was in evidence and is evidence of the fact that the journal can be off he was two months off as to when the document was published. Why don't we do this question by question.

THE COURT: Why don't you pose your question and we will see if it is clear enough to be answered and try that.

What is your question?

In the National Review, page 333, October 22, 1963 opposing busing Mr. Buckley said citizens are threatened by "a visit from Bobby Kennedy and his bayonette squads." Do you regard that as a responsible statement?

MR. MAHONEY: In the first place we have no identifications as to whether this is something Mr. Buckley wrote or somebody else wrote in it. The National Review keeps bound volumes of every issue appeared in the magazine and we have been in litigation for a long time and subject to whatever documentary production you wanted.

I don't know the point. You start out-

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Mr. Lowenstein is asked about Mr. Buckley's reputation

generally and specifically. That is reputation and Mr. Mahoney

was pretty much limited to that subject. Then Mr. Blasband

cross-examines about reputation and asks "Have you heard

certain contrary statements." Well, that could be relevant

to reputation so I will allow those questions.

Now you come along and ask neither line. You ask -you ask if certain specific statements in the Nationl Review
or other things by Mr. Buckley were or were not spoken.

I don't think this bears on reputation, which was really the
subject of the direct examination and I don't know what it
does bear upon.

MR. LITTELL: If you recall, your Honor, the witness had a number of general opinions about anyone who would try what I wrote in that book. Therefore, his judgment as to what is responsible seems to me to be very relevant.

MR. MAHONEY: Might I make one other point about the so-called journal document.

MR. BLASBAND: Your Honor, if I may, I think Dr. Littell is quite correct. I think we do have a right to know.

THE COURT: What was it?

MR. MAHONEY: As to his journal we will agree that his journal can go into evidence as evidence of what

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he relied on but insofar as he is producing--

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MR. LITTELL: That is a different question.

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MR. MAHONEY: Just a minute. Insofar as Mr. Dittell tenders his journal as accurately rendering stateme or quotations which are available at National Review and have been available and subject to discovery ever since this lawsuit started, I am going to state to the court that I have a standing objection to that. The journal is only admissible so far as I am concerned in that is what he reli on and what he said and then on the Sullivan point it is admissible for that purpose but only for that purpose.

THE COURT: I don't understand.

MR. MAHONEY: He has got this journal, Exhibit 19 Exhibit 20 which has scratches and snatches of quotations. He is reading those and asking Mr. Lowenstein to comment on them. Aside from the question of relevance--

THE COURT: Let's just get this. Let's assume, and I don't recall how far this went, it seems to me that Mr. Lowenstein commented on the quality of page 51 of the Tongue book. It was a kind of a non-responsive answer and I didn't strike it because I didn't parcel it out. But I don't really think that opens the door for reading a lot of supposed excerpts from the National Review beginning in 1963 and asking this witness if he believes those are

responsible. Nobody is suing the National Review for libel and they are not suing the National Review about the National Review issues about Bobby Kennedy or any of that material you are reading. So I think we have gone — we are really going to the point of absurdity as far as relevance. There is another problem. The question of whether these things have been taken out of context and how accurate they are and so I am going to sustain the objection. It is conceivable that if you had an accurate, full statement of what you are talking about it might have some relevance. I don't think so. But I would not completely bar it. At least the combination of possible inaccuracy or out of context information is not relevant. We are not going to start in on that. Do you have any other subject to cover?

MR. LITTELL: Your Honor, I have been confronted by papers at the last minute and by surprise witnesses and if we are to give credence to this witness' judgment, matters of broad opinion, then it seems to me that we should call someone like Seymour Lipsig, some like --

THE COURT: You can call witnesses. The plaintiff does not have to call any witnesses other than those the plaintiff chooses. You can call your own witnesses. Do you have any other questions of this witness?

MR. LITTELL: I do have a Xerox of something. This

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may satisfy Mr. Mahoney's problems. Mr. Buckley has testified in his deposition that he was a contributing editor to the American Mercury.

Are you familiar with the American Mercury attack on the churches, rails in our churches?

THE WITNESS: I was familiar with it years ago.

If you mean do I know it occurred, I do, yes.

Do you consider that a responsible action?

MR. MAHONEY: Your Honor, if I may object that this is outside the scope of the direct. In testing Mr. Lowenstein's judgment we can ask him whether the Celtics will beat the Knicks tomorrow night. He is just asking general questions in and out as to what Mr. Lowenstein's judgment is about this and what Mr. Lowenstein's judgment is about that.

THE COURT: Look, you have made in your book

certain specific statements about Mr. Buckley and those state

ments we focused on numerous times, picking up from fascist

journals and so forth, misquotations. To simply ask Mr.

Lowenstein if he thinks something that Mr. Buckley said

is responsible or not does not help me on the case one bit.

I would sustain the objection. If you want to show me in
stances, and you want to prove through Mr. Lowenstein

or any other witnesses or a document that there was back-up

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Lowenstein-cross

material you jut in your book, of course that is relevant.

That is the Times v. Sullvan issue. But just to ask if a witness here thinks something is responsible, I don't think is directed to the issues. We have now consumed most of the rest of the day. Have you got any other questions of this witness on any subject other than ones we have been ruling on in the last few minutes?

MR. LITTELL: Your Honor, I will yield to your judgment.

THE COURT: Okay.

Any redirect?

REDIRECT EXAMINATION

BY MR. MAHONEY:

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Q The name of Fred Schwartz came up. Do you happen to know whether or not he is Jewish?

I would like to say one thought that in the last half hour sitting here occurs to me which is perhaps helpful. If the question in the book, the statements that I have been asked to testify about, involve any of these other named organizations or individuals I would not be here as a witness because I would not have known enough to testify intelligentely on the question. That is why I can't invent comments now about things that I would not be here to talk about.

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No.

MR. MAHONEY: No further questions, your Honor.

saying that Mr. Buckley indulges in misquotations?

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THE COURT: We are adjourned until tomorrow. We have to finish tomorrow. If there is a continuance we will have to have a continuance to some day other than tomorrow. Let's do our best to finish tomorrow if we can.

MR. MAHONEY: I will do my best, your Honor.

MR. BLASBAND: May we have the answer to two questions. One, the question that I asked earlier today and that is the breakdown between the general and punitive damages.

THE COURT: You are excused.

(Witness excused.)

MR. BLASBAND: May we have that answer. The breakdown between the claimed punitive and general damages.

MR. MAHONEY: You asked me that this morning and we have been in session since and I would like to think about that overnight.

MR. BLASBAND: He has had six months to ponder this.

MR. MAHONEY: I would like to go back and look at cases. I don't think it will prejudice him.

MR. BLASBAND: It is a long time.

THE COURT: It's been a long time but I would like to have had it before.

MR. BLASBAND: I asked him about that four months

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